UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission System Operator, Inc.	**)**	**Docket No. RT01-_____-000**

ORDER NO. 2000 COMPLIANCE FILING

January 16, 2001

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I. INTRODUCTION

Pursuant to Section 35.34(h) of the Commission's regulations 18 C.F.R. Section 35.34(h) (2000) and the Commission's July 20, 2000 Notice of Guidance for Processing Order No. 2000 Filings, 92 FERC ¶ 61,048 (2000) ("Guidance Notice"), the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO") hereby submits this Order No. 2000 compliance filing. This compliance filing includes an Executive Summary, as required by the Guidance Notice, addressing each of the required regional transmission organization ("RTO") characteristics and functions set forth in the Commission's regulations. This compliance filing demonstrates that the Midwest ISO, as currently structured and established, is a compliant Regional Transmission Organization under the terms of Order No. 2000.[1]

Although the Guidance Notice encouraged joint filings by public utilities that participate in the same RTO, the transmission-owning members of the Midwest ISO have chosen to make individual compliance filings independent from this filing for reasons to be

[1] *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), o*rder on reh'g*, Order No. 2000-A, FERC Stats. and Regs. ¶ 31,092 (2000) (hereinafter referred to as "Order No. 2000" and "Order No. 2000-A," respectively).

made apparent in their filings. The Commission is also obviously aware of the fact that the Midwest ISO has been besieged by a rash of potential member withdrawals.

Illinois Power Company ("Illinois Power"), a subsidiary of Dynegy Inc. and a charter member of the Midwest ISO, formally petitioned the Commission for withdrawal approval.[2] Having received notice under the Transmission Owners Agreement,[3] Commonwealth Edison Company ("ComEd"), the Midwest ISO's single largest member, also submitted a filing on December 22, 2000 petitioning the Commission for approval to leave the Midwest ISO. Subsequently, given the actions of Illinois Power and ComEd, Ameren also notified the Midwest ISO of its intent to withdraw, based on reliability concerns given the intended withdrawals of the two Illinois-based companies. The purpose of this filing is not to debate the merits of the companies' reasons for departure or to take issue with the proposed Alliance RTO, which the potential three departing companies find more compatible with their economic interests.

On December 20, 2000, six other Midwest ISO Transmission Owners filed for conditional withdrawal from the Midwest ISO with the Commission in the event the Commission permits Illinois Power, ComEd and/or Ameren to leave the Midwest ISO. The list of these companies include Cinergy Corp., Hoosier Energy R.E.C., Inc., Wabash Valley Power Association, Inc., Southern Indiana Gas & Electric Company, Central Illinois Light

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[2] On October 13, 2000, Dynegy Inc., for and on behalf of Illinois Power, filed its notice and request to withdraw from the Midwest ISO in Docket No. ER01-123-000.

[3] "Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation," Docket No. ER98-1438 (January 15, 1998) (hereinafter referred to as the "Midwest ISO Agreement" and included as Attachment A to this filing).

Company, and the Southern Illinois Power Cooperative.[4] Before the end of the year, the American Transmission Company LLC ("ATC LLC"),[5] WPS Resources Corporation and its subsidiaries,[6] the Alliant Energy Operating Companies,[7] and the Operating Companies of Xcel Energy[8] all tendered conditional notices of withdrawal to the Midwest ISO in order to preserve their rights and protect the interests of their companies and their customers if Illinois Power, ComEd, and/or Ameren are allowed to withdraw.

In early January 2001, Louisville Gas & Electric Company and Kentucky Utilities Companies tendered their conditional notices of withdrawal from the Midwest ISO based on statements similar to those of the first six Transmission Owners. As a final plea for assistance in the Midwest, on January 8, 2001, various market participants of both the

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[4] The six Midwest ISO Transmission Owners filed their notice to withdraw and request for authorization to recover associated costs on December 20, 2000 in Docket No. ER01-731-000.

[5] As of January 1, 2001, six utilities contributed their transmission facilities to ATC LLC. They are: Wisconsin Electric Power Company, Edison Sault Electric Company, Wisconsin Power & Light Company, South Beloit Water, Gas and Electric Company, Madison Gas and Electric Company, and Wisconsin Public Service Corp. ATC LLC will be the control area operator for these entities and is prohibited from owning generation.

[6] The subsidiaries of WPS Resources Corporation include Wisconsin Public Service Corporation and the Upper Peninsula Power Company.

[7] The Alliant Energy Operating Companies include Wisconsin Power & Light Company, IES Utilities Inc., and Interstate Power Company.

[8] The Xcel Energy Operating Companies include Northern States Power Company and Northern States Power Company - Wisconsin.

proposed Alliance RTO and the Midwest ISO,[9] along with two Midwest ISO Transmission Owners, Cinergy Services, Inc. and Central Illinois Light Company, filed interventions in the Midwest ISO and Alliance dockets requesting that the Commission appoint a settlement judge to oversee the process to unite the Midwest ISO and the Alliance RTO in order to form a single, large RTO in the Midwest or in the alternative, to have two RTOs in the Midwest that effectively function as a single RTO from the perspective of all transmission stakeholders.

The Midwest ISO maintains that if the Commission permits the recent wave of potential departures to occur, then the Midwest ISO will be rendered incapable of satisfying most of the Commission's RTO characteristics and functions as defined under Order No. 2000. Prior to the announcements outlined above and the two withdrawal filings by Illinois Power and ComEd, the Midwest ISO steadfastly believes, subject to minor modifications, that its organization would have been found to be a fully compliant RTO. However, if Illinois Power, ComEd, and/or Ameren are indeed permitted to leave the Midwest ISO, then three of the four RTO characteristics are in jeopardy of being severely compromised. In summary:

1. The Midwest ISO would not be able to raise additional capital funding for its start-up independent of its members or possible owners;

[9] The market participants joining in the Motion included: Blue Ridge Power Agency (Virginia), Central Virginia Electric Cooperative, Craig-Botetourt Electric Cooperative (Virginia), City of Dowagiac (Michigan), City of Sturgis (Michigan), City of Wyandotte (Michigan), Detroit Public Lighting Department, Electricities of North Carolina, Inc., Indiana Municipal Power Agency, Michigan Public Power Agency, Michigan South Central Power Agency, and Virginia Municipal Electric Association No. 1.

2. An adequate scope and regional configuration is at risk because the potential departures will carve highly interconnected facilities out of the Midwest ISO. The departures will create a major gap between the remaining Midwest ISO transmission owners' as their transmission facilities will no longer be contiguous to each other; and

3. The exclusive authority to maintain short-term reliability is diluted because the Midwest ISO will not have the authority to redispatch generation connected with the transmission facilities owned by Illinois Power, ComEd and Ameren.

Notwithstanding the potential withdrawal notifications, the Midwest ISO believes that it currently meets the characteristics and functions of a regional transmission organization as set out in Order No. 2000. This filing will address the Midwest ISO's compliance with each characteristic and function and then address the potential effects member withdrawal has on these characteristics and functions. It will also address the Midwest ISO's active efforts to evolve its organizational structure and develop innovative rate methodologies proposed by other organizations since the formation of the Midwest ISO in 1998.

The authorities upon which this compliance filing is predicated are principally: (1) the Midwest ISO Agreement; (2) the Midwest ISO Open Access Transmission Tariff ("Midwest ISO Tariff"); and (3) the Order Conditionally Approving Establishment of Midwest Independent System Operator, *Midwest Independent Transmission System Operator, Inc.*, 84 FERC 61,231 (1998) ("Midwest ISO Order"). Capitalized terms in this filing will maintain the definitions afforded to them in the Midwest ISO Agreement, the Midwest ISO Tariff or the Midwest ISO Order as applicable, unless otherwise defined or explained herein.

II. EXECUTIVE SUMMARY

Order No. 2000 establishes the minimum characteristics and functions that must be satisfied for an entity to be deemed an RTO. The Midwest ISO, as it is currently configured, readily satisfies all four of the minimum characteristics. This remains true only if the Midwest ISO retains its present scope and configuration. If the Midwest ISO's scope and configuration are permitted to erode, its ability to maintain conformance with the other characteristics deteriorates in parallel with the diminished scope and configuration. As explained in more detail, *infra*, the Midwest ISO meets the requirements of Order Nos. 2000 and 2000-A as follows:

1. Independence – The Midwest ISO currently complies with the independence standard of Order No. 2000 because it meets each of the four elements of independence. The Midwest ISO's Standards of Conduct specifically preclude its directors, agents, officers and employees from having direct financial interests in any market participant. Secondly, the Midwest ISO's legal structure as a not-for-profit, non-stock corporation and its governance by a disinterested Board of Directors ("Board") assures that it is not subject to either active or passive ownership by market participants.

The third element requires that the RTO be capable of obtaining its financing independent of its Members and Transmission Owners. In May 2000, the Midwest ISO independently issued $100 million in notes without guarantees from any of its Transmission Owners. Once the Midwest ISO becomes operational in November 2001 and implements the Midwest ISO Tariff, there will be a stream of revenue available to recover costs and pay off debt. Until the commencement of operations, issuing debt is the only vehicle available for a non-profit entity to fund its start-up.

Finally, the ability to make tariff changes independently was met by the Midwest ISO at the time the Commission approved the voluntary formation of the Midwest ISO. In addition, the Commission has stated that it would render its decision with respect to the Midwest ISO's Section 205 filing rights when it considered this compliance filing.

2. Appropriate Scope and Configuration – The current scope and configuration of the Midwest ISO is adequate to comply with this characteristic. However, if the Commission approves the impending departures of Ameren, Commonwealth Edison and/or Illinois Power, this would greatly diminish the adequacy of the Midwest ISO's scope and configuration. This action by the Commission would eventually lead to the departure of all other existing Midwest ISO Members to the point where the Midwest ISO would no longer be an operationally viable RTO under Order No. 2000. This point has been further amplified by the conditional withdrawals of the remaining members, steadfastly committed to the Midwest ISO yet forced to leave if the impending departures of ComEd, Illinois Power, and/or Ameren are permitted. And finally, the potential withdrawals have caused previously uncommitted transmission owners who declared in their October 16, 2000 RTO filings their intentions to join the Midwest ISO reason to pause and reassess their options in light of recent events.

3. Operational Authority – The Midwest ISO is in conformance with all aspects pertaining to the operational authority provisions of Order No. 2000. The Midwest ISO will have functional control of all networked transmission facilities owned and operated at 100 kV or above. The Midwest ISO will serve as the security coordinator for the transmission systems subject to its functional control and will also have emergency plans and procedures in place in the event of a system emergency.

4. Authority to Maintain Short-Term Reliability – An RTO must have exclusive authority for maintaining the short-term reliability of the transmission grid under its control. The Midwest ISO has the exclusive authority to receive, confirm, and implement all interchange schedules. The Midwest ISO has the authority to order redispatch of any generator connected to transmission facilities it operates if necessary for the reliable operation of these facilities.

The Midwest ISO will have authority to approve and disapprove all requests for scheduled outages of transmission facilities to ensure that the outages can be accommodated within established reliability standards. The Midwest ISO also will honor and monitor compliance with reliability standards established by East Central Area Reliability Coordination Agreement ("ECAR"), Mid-America Interconnected Network ("MAIN") and Mid-Continent Area Power Pool ("MAPP") regional reliability councils.

5. Conformance With Minimum Functions – The Midwest ISO is in conformance with the eight RTO minimum functions described in Order No. 2000. The first function requires the Midwest ISO to implement and interregionally administer the Midwest ISO Tariff applicable to the Transmission System. The Midwest ISO will be the sole administrator of its own FERC-approved tariff, and it will be the entity with the sole authority to receive, evaluate, and approve or deny all requests for transmission service.

The Midwest ISO believes that its existing congestion management provisions, particularly as they relate to facilitating new service, are in technical compliance with the requirements of Order No. 2000 for Day 1 operations. The Midwest ISO and its Members, however, appreciate that technical compliance is not the goal of Order No. 2000 and began

work on a hybrid approach to address long-term congestion management, building on the strengths of locational marginal pricing and physical flowgates.

The Midwest ISO's size allows it to internalize most, if not all, of the effects of parallel path flow in its scheduling and pricing process. As presently structured, and given the pending addition of many of the transmission-owning entities within MAPP, the Midwest ISO will internalize significant flow issues within its region and many of the loop flows that exist in the Eastern Interconnection.

The Midwest ISO will offer to provide all ancillary services as defined and required under the Midwest ISO Tariff. The Midwest ISO will ensure that every scheduled transaction is supported by the required ancillary services and will deny scheduling any request where the required ancillary services have not been arranged. The Midwest ISO will serve as the provider of last resort for all ancillary services required by Order No. 888 and subsequent orders. Because the Midwest ISO will not be a control area, its role as provider rather than seller will be to secure ancillary services on behalf of customers and pass payment for such services directly to the supplying entity. The Midwest ISO's role will be that of an agent for these transactions.

The Midwest ISO will be the single OASIS administrator for all transmission facilities under its control and will independently calculate Total Transfer Capability ("TTC"). The Midwest ISO plans to implement an Independent Market Monitoring ("IMM") function in compliance with the sixth minimum function and remains hopeful that several regional RTOs will use the same entity to provide these services on a larger scale**.** The Midwest ISO will play a key role with overall responsibility for coordinating regional transmission system planning and expansion once it becomes operational.

The Midwest ISO has been instrumental in inter-regional coordination. The Midwest ISO has expended substantial time and energy discussing the seams issues with adjacent transmission owners and has authored and/or coordinated many strawmen proposals on technical topics such as One-Stop Shopping and Long-Term Planning Coordination, which eventually led to agreement among the participating RTO representatives.

Under Order No. 2000, the characteristics and functions of an RTO are to be provided through an organization with an "open architecture" that will adjust to changing circumstances. As such, the Midwest ISO is actively considering options to alter its current non-stock, not-for-profit organizational structure if circumstances warrant movement in a different direction from the current structure and implementing innovative ratemaking and performance-based rate approval. Furthermore, the Midwest ISO has already demonstrated architectural flexibility through the accommodation of properly structured Independent Transmission Companies ("ITCs") via Appendix I to the Midwest ISO Agreement, pending the acquisition of MAPPCOR's assets, and by supporting changes to accommodate the formation of Wisconsin's American Transmission Company LLC ("ATC LLC").

The Midwest ISO was approved with a rate structure that eliminates "pancaked" rates consistent with the requirements of FERC's Order No. 888. A comparison of the Midwest ISO's attributes (that are inherent in its founding documents) with the requirements of FERC's Order No. 2000 demonstrate that the Midwest ISO, with its current composition, possesses the four basic characteristics and will provide, or make available, the eight functions required of RTOs. Moreover, the Midwest ISO will accomplish this in an open architecture within a Commission approved non-pancaked rate structure that satisfies the Commission's RTO requirements.

III. MIDWEST ISO CONFORMANCE WITH ORDER NO. 2000 CHARACTERISTICS

The Commission's Order No. 2000 establishes the minimum characteristics that must be satisfied for an entity to be deemed an RTO. The four minimum characteristics are:

1. Independence from market participants;

2. An appropriate scope and regional configuration;

3. The operational authority over all transmission facilities under RTO control; and

4. Exclusive authority to maintain short-term reliability.

A. The Independence Characteristic

1. Order No. 2000 Compliance Requirement

Independence for the Midwest ISO, as FERC views it, has four aspects. Three aspects originate in Order No. 2000 and one stems from the Midwest ISO Order. The four aspects of independence are as follows:

(a) the RTO, its employees and its non-stakeholder directors must not have any financial interest in any market participants;[10]

(b) the RTO must have a decision-making process that is independent of control by any market participant;

(c) the RTO must have the ability to raise capital independently of its members or possible owners (this requirement originates from the Commission's Order conditionally approving the Midwest ISO); and

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[10] Order No. 2000 at 31,063. In addition, "market participant" means: any entity that, either directly or through an affiliate, sells or brokers electric energy, or provides transmission or ancillary services to the RTO, unless FERC finds that the entity does not have economic or commercial interests that would be significantly affected by the RTO's actions or decisions; and any other entity that FERC finds has economic or commercial interests that would be significantly affected by the RTO's actions or decisions. *Id*. at 31,061.

(d) the RTO must have the independent and exclusive right to make a Section 205 filing.[11]

2. Midwest ISO Conformance with the Independence Characteristic

Summary of Conformance. The Midwest ISO complies with the independence standard of Order No. 2000 (and FERC's original Midwest ISO Order) because it meets each of the four independence standards. As to the first element, the Midwest ISO's Standards of Conduct (found at Appendix A to the Midwest ISO Agreement) specifically preclude its directors, agents, officers and employees from having a direct financial interest in any market participant. *See*, Midwest ISO Agreement, Appendix A, Section II.E at 96-97. Furthermore, the Midwest ISO's legal structure as a not-for-profit, non-stock corporation assures that it is not subject to either active or passive ownership by market participants.

As to the second element, the Midwest ISO's decision-making process is independent of control by any market participant. The Midwest ISO is governed by a disinterested Board. In addition, Article Two, Section IV, Paragraph D.1 of the Midwest ISO Agreement provides that: "[T]he right of the President to exercise functional control over the operation of the Transmission System . . . shall be absolute, unconditional, and free from the control and management of the Owners . . ." *See,* Midwest ISO Agreement at 33. In the Midwest ISO Order, the Commission found that the Midwest ISO would "possess the requisite independence from the Transmission Owners."[12] Midwest ISO Order at 62,151. To address

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[11] *Id.* at 31,076. *See, also*, Order No. 2000-A at 31,368.

[12] The Commission ordered that all Members, not the Transmission Owners alone, must vote to remove the Midwest ISO Board, which directive was met in the Midwest ISO's compliance filing dated December 31, 1998.

FERC's concern that the non-stakeholder Board not become isolated,[13] the Midwest ISO's Agreement and Bylaws ensure input from both the Transmission Owners and a representative stakeholder Advisory Committee. Midwest ISO Agreement at 43-45 and Midwest ISO Bylaws at 193-194 (Appendix F of the Midwest ISO Agreement).

The Midwest ISO has made great strides in meeting the third element of the test, independent financing capability, by raising $100 million in start-up capital through a financing accomplished independent of any guaranty from or participation by its Transmission Owners or other Members. *See, Midwest Independent Transmission System Operator, Inc.*, 91 FERC ¶ 62,079 (2000). However, this was only the initial tranch of financing. The Midwest ISO will require a second round of financing in order to continue building its required infrastructure. The initial note sale was well received by the financial markets. In light of recent events and the potential loss of significant load subject to the Midwest ISO tariff cost recovery mechanism, the Midwest ISO is admittedly a much riskier proposition. The financial markets are wary of purchasing additional notes of the Midwest ISO with the current uncertainty.

The final element of the Commission's independence characteristic, the RTO's ability to make changes to the Midwest ISO Tariff, was met by the Midwest ISO at the time the Commission approved the voluntary formation of the Midwest ISO. *See,* Midwest Order, 84 FERC ¶ 61,231 (1998). In addition, the Commission further stated in Order No. 2000-A, that it would render its decision with respect to the Midwest ISO's current division of

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[13] Order No. 2000 at 31,074.

Section 205 filing rights (as well as other previously approved RTOs) when it considered the Midwest ISO's filing to be submitted pursuant to the requirement of Order No. 2000.[14]

A fuller discussion of the manner in which the Midwest ISO meets each of these four aspects of independence follows:

(a) The Midwest ISO, its Directors and Employees Have No Financial Stake in the Market.

The Midwest ISO, its officers, directors and employees meet the first of FERC's independence standards, financial independence, by not possessing financial interest in any market participant. Moreover, there is no active or passive ownership of the Midwest ISO by market participants. In addition, the financial and market independence of the Midwest ISO's officers, directors and employees are ensured through the Standards of Conduct. Article II, Section E of the Midwest ISO's Standards of Conduct provides that the directors, officers and employees of the Midwest ISO "shall not have a direct financial interest in, or stand to be financially benefited by, any transaction with any of the Owners, Members, or Users of the Transmission System." Appendix A to the Midwest ISO Agreement at 96. Finally, each director, agent, officer and employee is required to divest him/herself of any securities of a market participant within six months of employment.[15] *Id.*

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[14] Order No. 2000 at 31,371.

[15] In the Midwest ISO Order, the Commission found that the original provisions relating to financial independence were inadequate because there was no provision prohibiting participation by an ISO director, agent, officer or employee in a pension plan of any Member or User or any affiliate of any Member or User. Midwest ISO Order at 62,153. The Midwest ISO filed an appropriately revised Standards of Conduct in a compliance filing dated December 31, 1998.

The Midwest ISO is governed by an independent Board. There are no seats on the Board reserved for or that can be determined by any particular class of Members. All Eligible Customers for transmission service (generally defined as electric utilities, power marketers, federal power marketing agencies and persons generating electricity for resale) may become Members of the Midwest ISO. Membership entitles each Member to cast one vote for the directors.

The ISO Board controls the Midwest ISO's fundamental decisions and supervises its managers' operation of the system. The Board has the authority to modify the Midwest ISO Agreement, including the appendices (subject, of course, to filings with the Commission) with limited exceptions involving transmission pricing and revenue distribution. These limited exceptions, more fully set out in Appendix C to the Midwest ISO Agreement attached hereto, may only be changed with the consent of the Midwest ISO Transmission Owners.[16]

Pursuant to the request of state regulators, the Midwest ISO Participants[17] adopted a disinterested Board structure, which is intended to not favor any single market participant or any industry class. The framework of the Midwest ISO's Board was modeled on the structure of the board of directors the Commission previously approved in *PJM*

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[16] Significantly, in its *Primergy* decision, the Commission recognized that pricing and revenue requirement recovery are matters of special importance to the transmission owners of an ISO and held that that transmission owners could require ISO rate changes to be filed even if the Board disagrees. *Wisconsin Elec. Power Co.*, 79 FERC ¶ 61,158 at 61,735-36 (1997) ("*Primergy*").

[17] The Midwest ISO Participants were Cinergy Corp. (on behalf of Cincinnati Gas & Electric Company, PSI Energy, Inc. and Union Light, Heat & Power), Commonwealth Edison Company (including Commonwealth Edison Company of Indiana), Wisconsin Electric Power Company, Hoosier Energy Rural Electric Cooperative, Inc., Wabash Valley Power Association, Inc., Ameren (on behalf of Central Illinois Public Service Company and Union Electric Company), Kentucky Utilities Company, Louisville Gas & Electric Company, and Illinois Power Company.

Interconnection LLC, 81 FERC ¶ 61,257 (1997) and *New England Power Pool*, 79 FERC ¶ 61,374 (1997).

In *New England Power Pool*, the Commission stated that "a board of directors with no affiliation with any entity dealing with the ISO would assure fair and non-discriminatory governance." *Id.* at 62,585. Consistent with *New England Power Pool*, the Midwest ISO's structure of the Board was designed to ensure that it was "comprised of qualified, non-partial members." Midwest ISO Order at 62,147 citing footnote 63. The Board was elected by the members of the Midwest ISO. A Member is any eligible transmission customer (including the Transmission Owners) who pays membership fees as specified in the Midwest ISO Agreement.

The Midwest ISO's Board consists of seven members and the President of the Midwest ISO, each of whom is required to comply with detailed Standards of Conduct that prohibit them from favoring or discriminating against any Midwest ISO Participant. The directors and President may not have served (within two years prior to or subsequent to office) as either a director, officer or employee of a Midwest ISO Member, User or their affiliates. The directors were elected by the Members from a slate of candidates chosen by an independent executive search firm. To ensure knowledgeable and effective administration of the ISO, the directors are required to have specific expertise in varying areas such as corporate leadership, finance or accounting, engineering, or utility law and regulation. Two of the directors are required to have backgrounds in transmission systems (*i.e.*, one in planning and the other in operations). One of the directors is to have a background in the commercial markets and be familiar with risk management.

In its September 16, 1998 Order conditionally approving the application of the Midwest ISO Participants to transfer operational control of their jurisdictional transmission facilities to the Midwest ISO, the Commission accepted the director qualification requirements but prohibited "participation by an ISO Director, agent, Officer or employee in a pension plan of any Member or User, or any affiliate of any Member or User." Midwest ISO Order at 62,153.

On October 16, 1998, the Midwest ISO Participants sought rehearing on the pension issue pointing out that the Commission's ruling would prevent the Midwest ISO from employing the most highly qualified individuals and cause great difficulties in hiring qualified employees and directors due to the Commission's pension limitation.[18] In a November 24, 1998 Order, the Commission granted the Midwest ISO Participants' emergency motion for reconsideration finding that the prohibition on participation in all

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[18] On October 29, 1998, the Midwest ISO Participants filed an emergency motion for reconsideration arguing: (i) that the Commission's ruling in the September 16 Order, prohibited the Midwest ISO's Board from participating in any pension plan of any Member or User, or any affiliate of any Member or User; and (ii) that the Commission's ruling had made it difficult to locate a sufficient number of highly qualified candidates for the two Midwest ISO director positions requiring both transmission planning and operational experience. In its emergency request for reconsideration, the Midwest ISO Participants stated that virtually all of the highly qualified candidates identified would be disqualified because they possessed pension rights in entities that may become Members or Users of the Midwest ISO, or were affiliated with potential Members or Users. The Midwest ISO Participants also argued that the expertise of these Board members was of critical importance as they will be responsible for hiring highly qualified officers and staff to create a new organization to operate the transmission system in a reliable manner. The Midwest ISO Participants attached to their emergency request for reconsideration an affidavit from their executive search firm which attested to the difficulties of finding qualified directors. The Midwest ISO Participants requested the Commission's reconsideration of its prohibition on directors and employees maintaining pension rights in Members or Users or affiliates of Members or Users and allow directors to maintain such pension rights as long as directors do not own securities in Members, Users or their affiliates.

pension plans of any Member or User, as directed in the September 16, 1998 Order, unduly limited the Midwest ISO's recruitment of highly qualified candidates for its Board and, further, that such prohibition also unduly limited the recruitment of highly qualified candidates for employees responsible for maintaining day-to-day transmission reliability. *Midwest Independent Transmission System Operator, Inc.*, 85 FERC ¶ 61,250 (1998). The Commission recognized that the expertise of Board members, as well as employees, was of critical importance to the Midwest ISO's efforts to ensure reliability. *Id.* at 62,036.

In addition, the Commission acknowledged that: (i) certain pensions did not involve the ownership of securities, which pensions were defined benefit pensions that were not affected by the performance of the company providing the pensions; (ii) under such pension plans, pension payments were not compensation to the employee from a market participant but were from a trustee distributing to the former employee funds in accordance with the rules of the pension plan; and (iii) that these types of pension rights were also difficult, if not impossible, for employees to sell or transfer. *Id*.

In the Commission's November 24, 1998 Order, the Commission concluded that participation in the type of defined benefits pension plan described by the Midwest ISO Participants would not unduly compromise the financial independence of directors, officers and employees from market participants nor would such participation violate ISO Principle No. 2. *Id*. Accordingly, the Commission granted reconsideration to allow directors, officers and employees of the Midwest ISO to participate in the pension plans of members, users, or affiliates as long as they were defined benefit types of plans that did not involve the ownership of the company's securities.

(b) Independent Decision-Making Process.

The Board and the Midwest ISO's management make decisions on strategic and operational matters independent of the influence of member or market participants. The Board sets general policies and oversees the President's implementation of these policies. The President implements the Board's policies by controlling the day-to-day operation of the Midwest ISO and is responsible for the operational control of the transmission assets acquired by the Midwest ISO.[19] The Midwest ISO's Board meetings are open to the public and allow any entity to bring its concerns directly to the Board consistent with the rules that the Board may establish. The governance mechanism is accompanied by structured opportunities for constituent input. As a result, the Board and management are independent of, but not unaware of, constituency views. This formal structure allows for regular reports to the Board from a Transmission Owner's Committee and an Advisory Committee. The Transmission Owner's Committee is composed of those Members who have signed the Midwest ISO Agreement and agreed to transfer functional control of their transmission facilities to the Midwest ISO. The Advisory Committee consists of 14 representatives of all stakeholder groups and is comprised of the following: two representatives from participating Transmission Owners; two representatives from municipal, cooperative and transmission-dependent utilities; two representatives from independent power producers and exempt wholesale generators; two representatives from power marketers and brokers; two representatives from eligible end-use customers; two representatives from state commissions, one representative from state consumer advocate agencies; and one representative from

[19] *See, e.g.*, Article Two, Section IV, Paragraph D at 32-5 of the Midwest ISO Agreement and Appendix F, Article V, Section 5.4 at 187-90 of the Midwest ISO Bylaws.

stakeholder groups representing environmental and other interests.[20] The President, the Chairman and Vice Chairman of the Midwest ISO must meet at least quarterly with the Advisory Committee. Up to this point, meetings have been held almost monthly. The Advisory Committee advises the Board on policy matters; however, the Advisory Committee (and the Transmission Owners on it) can only provide information and recommendations to the Board. In the final instance, the Advisory Committee has no authority over the Board. In addition to its mandated minimum quarterly meetings, the Advisory Committee also meets prior to the Board meetings to discuss issues or present recommendations to the Board. The President, the Chairman and Vice Chairman attend these meetings as well.

All Members have opportunities for informal contributions to the Board, in addition to the formal opportunities for input. Through open meetings of working groups and other task forces headed by the Midwest ISO staff, Members and affected constituencies have the opportunity to provide input on fundamental operational issues (*e.g.*, losses, scheduling, settlements). Accordingly, in conjunction with the Advisory Committee, the Midwest ISO's specially qualified Board meets the Commission's Order No. 2000 requirements that the "Board not become isolated," and that "[b]oth formal and informal mechanisms must exist to ensure that stakeholders can convey their concerns to the non-stakeholder board." Order No. 2000 at 31,074.

[20] The Advisory Committee's size will be expanded upon closure of the Mid-Continent Area Power Pool ("MAPP") asset acquisition to allow for two representatives from the MAPP membership to sit on the Advisory Committee. A request to amend the Midwest ISO Tariff and Midwest ISO Agreement to allow for such expansion was made on November 20, 2000 in Docket No. ER01-479-000.

(c) Independent Capitalization.

The need for the Midwest ISO to obtain financing independent from the Transmission Owners or other market participants who might exercise indirect control as guarantors or creditors was recognized by the FERC in its approval of the Midwest ISO. The initial start-up costs for the Midwest ISO were funded by a short-term credit facility that was guaranteed by Unicom Corporation, the parent company of Commonwealth Edison. In its Midwest ISO Order, the Commission held:

> We believe it is critical that the ISO be self-funded in order to ensure its independence. We will condition our Section 203 approval on Applicants filing . . . additional information that will describe how the ISO will fund its start-up activities prior to the Transfer Date. We add that the Midwest ISO will be a public utility and, as such, may file under Section 205 of the FPA to modify the adder in order to cover its operating costs.

Midwest ISO Order at 62,149.

The Midwest ISO has taken an important initial step in achieving its required independent financial status. On June 1, 2000, the Midwest ISO independently financed an issuance of $100 million of 8-3/4% Senior Notes due in 2012. The proceeds were used to pay down short-term debt and fund current and future capital expenditures for the development of its integrated control center system and communications system in addition to having funded ongoing operations prior to start-up. This successful issuance of notes in the private placement debt markets followed explicit authorization for issuance of these securities by the Commission and resulted in the Midwest ISO reaching an important milestone in order to make the case for having achieved its financial independence separate from the guarantees of the Transmission Owners or its Members. *Midwest Independent*

Transmission System, Operator, Inc., 91 FERC ¶ 62,079 (2000). This was a monumental step forward, but the Midwest ISO still requires a second round of independent financing,[21] which is now not feasible in light of the potential withdrawal of several Transmission Owners.

(d) Tariff Changes.

The Midwest ISO Tariff makes clear the division of Section 205 authority between the ISO and the Transmission Owners. It states that "[n]othing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the right of the Transmission Provider [the Midwest ISO] or Transmission Owner(s) to unilaterally make application to the Commission for a change in rates, terms and conditions, charges, classification of service, Service Agreement, rule or regulation under Section 205 of the Federal Power Act and pursuant to the Commission's rules and regulations promulgated thereunder; provided, however, the Transmission Provider and the Transmission Owners are restricted in their ability to make certain changes as detailed in the ISO Agreement." Midwest ISO Tariff at 32 and 33 (bracketed material added).

Article Two, Section IX.B of the Midwest ISO Agreement sets forth those reciprocal restrictions. It provides that as part of the Transmission Owners' mutual bargain in surrendering operation of their transmission facilities to the Midwest ISO, provisions with respect to pricing and distribution of transmission service revenues cannot be amended except by unanimous vote of the Transmission Owners who are signatories to the Midwest

[21] On December 15, 2000, the Midwest ISO filed an Application pursuant to Section 204 to issue securities in Docket No. ES01-13-000 for the second round of financing.

ISO Agreement. Midwest ISO Agreement at 55. After the Transition Period,[22] the pricing approach may be changed by a three-fourths (3/4) affirmative vote of the Transmission Owners with each Transmission Owner having one vote. Article Two, Section IX, Paragraph C.7 of the Midwest ISO Agreement at 57. The remainder of the Midwest ISO Tariff is within the scope of rates, terms and conditions that the Midwest ISO may unilaterally file to change. Important to the Midwest ISO is the ability to file changes to its cost adder (which is currently capped at $0.15 Mwh) without the consent of either the Transmission Owners, the Advisory Committee or its Members.

When the Commission approved the establishment of the Midwest ISO, less than two years ago, it noted that "[t]he Transmission Owners reserve the right to unilaterally change the Appendix C pricing provisions and revenue distribution methodology under Section 205 of the FPA." Midwest ISO Order at 62,151. The Commission expressly recognized "that cost shifting and cost recovery are of paramount concern to the Transmission Owners and do not seek to undermine the negotiated agreement between the parties" and honored this reserved right during the six-year transition period (*i.e.*, from the date the Midwest ISO begins operations). *Id.* For this reason in its Midwest ISO Order, the Commission noted the Midwest ISO Transmission Owner's rights to file revisions to the Midwest ISO Tariff, subject to certain restrictions set forth in the Midwest ISO Agreement, and accepted specific rights reserved by the Transmission Owners and the Midwest ISO. *Id*. at 62,174.

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[22] "Transition Period" is defined in Appendix C of the Midwest ISO Agreement as beginning on the Transfer Date and ending on the sixth anniversary of the Transfer Date. "Transfer Date" is defined in the Midwest ISO Agreement at Article Two, Section X, Paragraph B as the date the Transmission Owners transfer operational control of the Transmission Systems to the Midwest ISO. Midwest ISO Agreement at 58.

At the same time, the Commission expressly approved the basic pricing structure and the agreed revenue distribution established for the duration of the transition period. The zonal license-plate rate structure approved for the Midwest ISO is similar to the transmission pricing structure that has been approved for all other ISOs. Indeed, in Order No. 2000, the Commission indicated that license-plate pricing structures might be appropriate for continued use beyond the various ISO transition periods. Order No. 2000 at 31,177. Therefore, the current pricing structure required by the Midwest ISO Agreement, which cannot be changed without unanimous approval of the Transmission Owners, is consistent with the Commission's RTO policy.

In Order No. 2000, the Commission reconsidered the standard it had published in the Notice of Proposed Rulemaking that gave rise to Order No. 2000 and stated that:

> [I]n order to ensure their independence from market participants, [the RTO] must have the independent and exclusive right to make Section 205 filings that apply to the rates, terms and conditions of transmission service over the facilities operated by the RTO. This determination, however, is subject to several important clarifications discussed below.
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> * * *
>
> [I]t also is reasonable for the transmission owners to retain certain independent Section 205 filing rights with respect to the level of the revenue requirement that the transmission owners receive from the RTO and that the RTO, in turn, will collect from the transmission customers through its rates.
>
> * * *
>
> The Commission will require RTOs to provide a detailed description of the process to allow us to access its fairness and workability.

Id. at 31,075-6 (bracketed material added).

The Midwest ISO Participants sought clarification from the Commission that Order No. 2000 did not represent a reversal of the Commission's recently expressed commitment to honor the provisions of the Midwest ISO Agreement on the issue of Section 205 filing rights in order to qualify as an RTO and requested the Commission to make clear that the Midwest ISO Transmission Owners could continue to control the rate formula. The Midwest ISO Participants explained that the Midwest ISO Agreement specifically delineated the rights of the Midwest ISO and the Transmission Owners, with certain pricing rights reserved to the Transmission Owners during a limited transition period. The Midwest ISO Participants asserted that this was a critical element of the Midwest ISO Agreement and noted that the Commission explicitly stated in the Midwest ISO Order that it would honor the Transmission Owners' rights during the six-year transition period after start-up. The Midwest ISO Participants contended that the requirement in Order No. 2000 that the RTO make Section 205 filings to recover costs from transmission customers was at odds with the Midwest ISO Transmission Owners' rights to control filings to change the Midwest ISO's rates. The Midwest ISO Participants further claimed that Order No. 2000's division of authority should not be applicable in the context of the Midwest ISO's Tariff, which contains a rate formula.

In Order No. 2000-A, the Commission clarified that it was not making any findings as to the current division of Section 205 filing rights for any existing ISOs. Order No. 2000-A at 31,371. The Commission stated that it would await the RTO compliance filings and reiterated that it would entertain other approaches to the division of filing authority as long as

the RTO's independence and the Transmission Owner's ability to protect revenue recovery were both ensured. *Id.*

The Commission further explained that in the situation where the RTO operates and provides transmission service over transmission facilities owned by another entity, *e.g.*, in the context of an ISO, there are two legitimate concerns that need to be balanced. Order No. 2000-A at 31,370. The first is concern for the RTO to have independent control over its tariff and not have a tariff that is subject to the control of particular participants in the RTO. *Id*. The other concern is that of transmission owners who will turn the operation of their transmission facilities over to the RTO and need reasonable assurance that they will continue to receive a fair return on their transmission investments. *Id.* The Commission stated in Order No. 2000-A that it had reconciled those concerns in Order No. 2000 by stating that in the ISO type of situation, the RTO must have the independent and exclusive right to make Section 205 filings that apply to the rates, terms, and conditions of transmission services over the facilities operated by the RTO, but that transmission owners have the right to make Section 205 filings to determine the appropriate payments for the RTO's use of their facilities. *Id*.

The Commission further stated in Order No. 2000-A as follows:

> [W]hat the Commission pointed out in Order No. 2000, is that in the context of an ISO, both the transmission owners and the RTO are public utilities under the FPA with respect to the same facilities. Further, it is the RTO, and *not* the transmission owners, that in this context is the provider (seller) of jurisdictional service. Because the RTO is providing the jurisdictional service, it is clearly within the parameters of Section 205 for the RTO to have on file a rate schedule for the services it provides, and that it have the exclusive authority to propose changes to that rate schedule.

Order No. 2000-A at 31,371.

The Midwest ISO believes that an appropriate balance has been arrived at with regard to filing rights. The Transmission Owners have stated rights with regard to their revenue requirements and distribution of these revenues, and the Midwest ISO's authority beyond those two subjects is not controlled or limited by the Transmission Owners or Members. Despite the implication of certain dicta within Order No. 2000, the Commission found preservation of these rights in the Order approving the Midwest ISO to be appropriate.[23]

3. The Effect Withdrawal Has on the Independence Characteristic

The continued financial independence of the Midwest ISO (and other proposed RTOs) is now at risk because of the prospect of early membership withdrawal. Not long after the recent wave of announcements regarding the potential withdrawal of several owners, Standard and Poor's reacted by revising the financial outlook for the Midwest ISO from stable to negative. The reason for this understandable action was based solely on the potential departure of major participating Transmission Owners.

While it may be true that the Midwest ISO's credit rating has remained at BBB+, the downgraded financial outlook casts some doubt over the long-term viability of the organization. More importantly, however, the downgrade has made it problematic for the Midwest ISO to continue building its infrastructure and procure the systems necessary in order to become operational by November 2001. Based on feedback the Midwest ISO has received from its investment banker, Merrill Lynch, if the situation regarding the potential

[23] A requirement to separate out the formula rate approach in the Midwest ISO Tariff to require that the Transmission Owners would separately file under Section 205 the FERC Form 1 data that they would then force the Midwest ISO to use would elevate form over substance. The process of Commission review of the Transmission Owners Form 1 data before it changes a rate level is the same whether it would be the subject of a Transmission Owners' filing or a filing by the Midwest ISO.

loss of large Transmission Owners is permitted to continue without restriction by the Commission, it will be impossible for the Midwest ISO to raise capital independent of its Members or Transmission Owners. According to the note agreement, the Midwest ISO will be in technical default on the $100 million in notes issued in May 2000 if the three Transmission Owners, Illinois Power, ComEd, and/or Ameren, are permitted to leave the Midwest ISO and the Commission does not allow for full recovery of all costs even without the withdrawing Members.

The Commission stated in its Order approving the Midwest ISO that the financial independence of the entity is critical to its success.[24] If additional capital is not available through commercial markets, the Midwest ISO may be required to have the remaining Transmission Owners finance the balance of the start-up costs which will compromise its financial independence. This potential loss of financial independence has another significant downside for the Midwest ISO with respect to its ability to expand membership.

In October of 2000, several public utilities owning transmission facilities previously uncommitted to an RTO were required to file their Order No. 2000 compliance plans with the Commission. Many companies not yet committed to an RTO indicated in their filings their intentions to join the Midwest ISO. Utilicorp United Inc. ("Utilicorp") committed to transfer operational control over the transmission facilities of its Missouri Public Service and WestPlains Energy-Kansas divisions to the Midwest ISO. Otter Tail Power Company ("Otter Tail") also informed the Commission that it was in negotiations with the Midwest ISO and would be prepared to join the Midwest ISO by December 31, 2000. In addition, a

[24] Midwest ISO Order at 62,149.

group of five Minnesota transmission owners that are members of the Mid-Continent Area Power Pool (collectively referred to as the "Minnesota Transmission Owners")[25] indicated that it was their hope efforts would favorably conclude with membership in the Midwest ISO. Finally, Southwestern Public Service Commission ("SPS"), an operating company of Xcel Energy Inc., reaffirmed its commitment to transfer operational authority to the Midwest ISO in its compliance filing to the Commission as a result of the merger proceedings between former Northern States Power Company and New Century Energies, Inc.

However, with the recent rash of potential and conditional withdrawals, many of these utilities have communicated directly to the Midwest ISO and/or the Commission that they are reevaluating their options in light of a potentially diminished scope and non-optimal configuration of the Midwest ISO due to the potential for withdrawal of certain Transmission Owners. As a result, Otter Tail amended its Order No. 2000 compliance filing and stated, with the recent announcement that three utilities (Illinois Power, ComEd and Ameren) have stated their intentions to withdraw from the Midwest ISO, Otter Tail needed to reassess its options with respect to joining the Midwest ISO by December 31, 2000, and reevaluate whether or not the Midwest ISO is the most appropriate RTO to join.[26] Further, SPS also requested approval to defer making a Section 203 and 205 filing to join the Midwest ISO in light of recent developments surrounding the Midwest ISO which have created uncertainty as

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[25] The "Minnesota Transmission Owners" are Dairyland Power Cooperative, Great River Energy, Minnkota Power Cooperative, Rochester Public Utilities and Southern Minnesota Municipal Power Agency.

[26] Otter Tail's November 27, 2000 Amendment to Order No. 2000 Compliance Filing submitted in Docket No. RT01-63-000 at 1.

to whether the Midwest ISO is the most favorable RTO for SPS to join.[27] Finally, even Minnesota Power, in its October 20, 2000 compliance filing in Docket No. RT01-78-000, addressed its concerns with respect to the Midwest ISO's viability as a result of recent announcements that certain members intended to discontinue membership in the Midwest ISO. Minnesota Power was also concerned and unwilling to accept any financial obligations which may be left behind for the remaining Midwest ISO Members. *See*, Minnesota Power Transmittal Letter at 3.

At this point in time, the Midwest ISO is still working hard to expand its membership in all directions, but the potential for withdrawal has brought Midwest ISO expansion to a grinding halt. The Midwest ISO fully understands the reasons for hesitation on the part of the prospective members, as their original decision to join was based in great degree on the inclusion of the key transmission systems owned by Illinois Power, Ameren and ComEd as being an integral part of the Midwest ISO.

Finally, the companies which expressed an interest in joining the Midwest ISO now have a financial disincentive to do so. Under an unlikely, but certainly plausible worse case scenario where the Midwest ISO is unable to gain access to the required capital markets to continue towards becoming operational, a new transmission owner filing to join the Midwest ISO today could end up with a financial obligation for repayment of the previously issued debt under the terms of the Midwest ISO Agreement. Midwest ISO Agreement at 76. The Midwest ISO had progressed toward financial independence when the announcements regarding withdrawal intentions occurred. The situation created by this uncertainty is

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[27] SPS's November 16, 2000 transmittal letter to the Commission in Docket No. EC99-101-002 at 1.

untenable. The deteriorating financial position of the Midwest ISO jeopardizes the financial viability of all RTOs as envisioned by the Commission.

The California ISO's credit concerns are a secondary result of the market questioning whether RTOs are a good financial risk. As a non-stock entity, the only way an RTO such as the Midwest ISO can finance its start-up is through the issuance of debt. The Midwest ISO understands that other RTOs are contemplating similar non-stock structures.[28] If the Midwest ISO is not viewed by the financial markets and utility industry analysts as a viable entity, then all non-stock RTOs will encounter difficulties in accessing the capital markets. Similarly, if there is no perceived stability in RTO membership, then even the for-profit RTO entities could be viewed negatively by the equity markets, adversely impacting their ability to fund their start-up operations.

The dilemma the Midwest ISO finds itself in at this juncture raises serious questions regarding the financial viability of all RTOs regardless of whether the entity is a non-stock corporation, acquiring its capital via the debt markets or a for-profit firm contemplating a capital structure including debt and publicly-traded stock. If RTOs are viewed as unstable due to a lack of long-term commitment from the parties owning the transmission assets and the ability to arbitrarily switch RTOs becomes accepted public policy, investors will require relatively high returns as compensation for the perceived risk of these organizations. This, in turn, will increase the start-up costs of RTOs.

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[28] *See*, RTO West "Filing Utilities" (Avista Corporation, Bonneville Power Administration, Idaho Power Company, The Montana Power Company, Nevada Power Company, PacificCorp, Portland General Electric Company, Puget Sound Energy, Inc., and Sierra Pacific Power Company) October 23, 2000 FERC Order 2000 compliance filing in Docket No. RT01-35-000.

The Commission must take a lead role in making the financial community more comfortable with the perceived business risks inherent in financing start-up RTOs. Without adequate sources of financing, newly formed RTOs will find it difficult to fulfill the Commission's nationwide vision of RTOs as described under Order No. 2000. The Commission can solidify the long-term viability of RTOs by taking the appropriate steps today to ensure appropriate levels of commitment among those public utilities required to participate in RTOs. The Midwest ISO's immediate financial challenge provides the test case that many consumers, marketers, state regulators and transmission owners are all anxiously watching. This issue of financial independence must be quickly resolved or the promise of regional transmission organizations as envisioned by the Commission will be left to die on the vine.

B. The Scope and Regional Configuration Characteristic

1. Order No. 2000 Compliance Requirement

An RTO must embrace "a region of sufficient scope and configuration to permit the RTO to effectively perform its required functions and to support efficient and non-discriminatory power markets." Order No. 2000 at 31,076. Although commenters urged the Commission to establish four or five RTOs, the Commission declined to prescribe initial boundaries for RTOs "at this time." *Id*. at 31,079. Instead, the Commission articulated factors relevant to a determination of appropriate scope. An RTO must be of sufficient scope to:

- accurately determine available transfer capability ("ATC") across a large portion of the grid using consistent assumptions and criteria;
- internalize loop flow and address loop flow problems over a large region;

- eliminate pancaked transmission rates within the broadest possible energy trading area; and

- promote efficient transmission expansion and control a highly interconnected portion of the grid.

In addition:

- A single transmission operator should control critical portions of a regional grid in order to manage transmission congestion; and

- An RTO must be the single OASIS operator over an area of sufficient regional scope to allocate scarcity as regional transmission demand is assessed, promote simplicity and "one-stop shopping" by reserving and scheduling transmission use over a larger area, and to thwart the exercise of market power.

Order No. 2000 at 31,082.

The Commission stressed that the geographic configuration should be one that facilitates "seamless trading areas." *Id*. at 31,083. In this respect, the Commission observed that an RTO may be able to achieve sufficient "effective scope" by coordination and agreements with neighboring entities, or by participating in a group of RTOs with either hierarchical control or a system of very close coordination. *Id*. Thus, the Commission stated that: "[w]e do not foreclose the possibility that an RTO may satisfy some of the minimum characteristics and functions by itself, while satisfying others through a strong cooperative agreement with neighboring RTOs to create a 'seamless trading area.'" *Id*.

The Commission also offered some guidance on scope and configuration factors that it would consider to be inappropriate. For example, the Commission noted that it would look disfavorably on RTOs of a "strategic" configuration, in which "transmission owners could seek to gain strategic advantage by the way an RTO is formed . . . [*i.e.*] placed to act as a toll collector on a critical corridor." *Id.* at 31,079-80 (bracketed material added). The

Commission also noted that it could receive multiple proposals for a region. *Id*. at 31,080. The Commission stated that if it were faced with multiple proposals, it would determine which RTO proposal best meets the objectives of Order No. 2000. The Commission indicated that there should only be one transmission operator in a region, with control over the transmission facilities of both public and non-public utility entities, *i.e.*, no "holes." *Id*. at 31,084. Portions of the transmission grid that are highly integrated and interdependent should not be divided into separate RTOs. *Id*. An RTO should not be dominated by a few buyers or sellers of energy, and should not be configured such that participants can exercise transmission market power by collecting congestion fees on a critical corridor. *Id.*

2. Midwest ISO Conformance with the Scope and Regional Configuration Characteristic

The Midwest ISO believes that under its current configuration, the Midwest ISO satisfies this major aspect of Order No. 2000. The Midwest ISO is of sufficient scope and regional configuration to conform with all factors inherent in this requirement. Even prior to the consummation of the pending merger with Mid-Continent Area Power Pool ("MAPP"), the Midwest ISO, as it is currently comprised, is the largest ISO in the country encompassing portions of thirteen states, including 52,000 miles of transmission lines, 78,000 megawatts of installed generating capacity in a combined service territory covering more than 255,000 square miles. The Midwest ISO will have functional control in real-time of transmission assets with gross investment totaling approximately $8 billion.

Geographically, the Midwest ISO, given its current configuration, will encompass a region that includes portions of the north central Midwest states of Ohio, Indiana, Illinois, Kentucky, Iowa and Missouri and from the Dakotas across portions of Minnesota to

ATC LLC, a single purpose, for-profit transmission company located in Wisconsin and Michigan's Upper Peninsula.

3. The Effect Withdrawal Has on the Scope and Regional Configuration Characteristic

The Midwest ISO currently meets the scope and configuration characteristic. However, this compliance is only met if the Midwest ISO's present footprint remains substantially intact. The Midwest ISO includes significant portions of Indiana, Iowa, Kentucky, Minnesota, Missouri, and Wisconsin. The state of Illinois lies in the geographical center of the Midwest ISO's footprint, and the highly interconnected system owned by Ameren also encompasses western Illinois and northeastern Missouri. The departure of Illinois Power, ComEd, and especially Ameren would create a large hole in the middle of the Midwest ISO that would leave it with a technically unworkable scope and configuration. The departure of these companies clearly has precipitated a cascade of departures and reversal of any possible expansion of the Midwest ISO system that is presently being contemplated.

The key transmission system which is vital to the Midwest ISO's RTO operational viability is Ameren. This statement should not be construed as discounting the importance of the Illinois Power transmission system, which is highly integrated with Ameren's or the transmission assets of the Midwest ISO's single largest Member – ComEd. Ameren has the highest degree of physical interconnection with other Midwest ISO Transmission Owners including its direct ties to both Illinois Power and ComEd. Ameren provides the bridge between the Midwest ISO Transmission Owners located in MAPP and northern MAIN, such as Alliant Energy, Xcel Energy (formerly Northern States Power) and ATC LLC, with the

transmission systems in ECAR owned by Cinergy, LG&E, and Southern Indiana Gas & Electric. Furthermore, Ameren has direct ties to the west to Utilicorp, a public utility that indicated they would join the Midwest ISO. As previously stated, Utilicorp is currently reassessing its options in light of the potential withdrawal notices because its system is tied to the Midwest ISO by the interconnection of the Missouri Public Service and Ameren systems. The Ameren system, because of its keystone location on the transmission grid, provides connectivity between the eastern and western members of the Midwest ISO. Given the breadth of these interconnections, if Ameren is permitted to leave, the Midwest ISO is no longer a viable RTO as its scope and configuration are no longer consistent with the large regional requirements of an RTO in compliance with Order No. 2000.

The Midwest ISO expects its region to broaden and expand over the years as other entities join the Midwest ISO once it is operational. Some of the expansion will occur upon the Midwest ISO's closing of the pending asset acquisition with MAPPCOR. Additional expansion is likely to occur if the Internal Revenue Service takes action to free other public utilities and public power entities from concerns over the tax status of their bonds and revenue sources of income.

The potential movement of the three current Midwest ISO Transmission Owners (Illinois Power, ComEd and Ameren) to a proposed RTO lying directly east of the Midwest ISO would seriously degrade the Midwest ISO's conformance with an adequate scope and configuration. If these companies are permitted by the Commission to exit, then the remaining smaller systems owned by the Midwest ISO Members, Southern Illinois Power Cooperative ("SIPC") and Central Illinois Light Company ("CILCO"), would become island

systems within an RTO that they are not affiliated with. At least nine (9) of the remaining Midwest ISO Transmission Owners would be impacted by this separation or isolation. CILCO is a relatively small system surrounded by Illinois Power, ComEd and Ameren. Consequently, CILCO and SIPC are not in sole control of their RTO destiny and are therefore subject to the decisions of the other potentially departing Transmission Owners.

In conclusion, in both Order No. 2000 and the Midwest ISO Order, the Commission noted five benefits that are anticipated to flow from a large RTO of proper scope and configuration: (1) promotion of competition; (2) elimination of rate pancaking; (3) improved reliability; (4) better calculation of ATC; and (5) more efficient congestion management. The Midwest ISO with its present scope and configuration will deliver the benefits as the Commission anticipated in Order No. 2000, but only if it remains largely intact. If the three departing companies and, more specifically Ameren, are successful in their efforts to leave the Midwest ISO, then the Midwest ISO basically dies. The Midwest ISO will not continue to exist if the transmission systems lying within its geographical heart are carved out.

C. The Operational Authority Characteristic

1. Order No. 2000 Compliance Requirement

Order No. 2000 provides that the RTO must have operational authority over all transmission facilities under its control. While FERC did not require an RTO to operate a single control area, the RTO must have ultimate responsibility for providing nondiscriminatory transmission service for all market participants and must be the North American Electric Reliability Council ("NERC") security coordinator for the transmission facilities that it controls. When the RTO is not a single control area, hierarchical control

must be exercised. Hierarchical control relies on a master-satellite control structure, which establishes a single controlling authority without requiring the construction of a single, consolidated control room. The RTO security center assumes the dual role of the master control center and security center, with clear authority to direct all actions at the satellite centers.[29]

2. Midwest ISO Conformance with the Operational Authority Characteristic

Operations

The Midwest ISO will control the operations of 100 kV and above looped transmission facilities and certain networked transformers of its Members. Article Three, Section I.A of the Midwest ISO Agreement authorizes the Midwest ISO to exercise functional control over the operation of the transmission system as necessary to effectuate transmission transactions administered by the Midwest ISO. Midwest ISO Agreement at 60. Specifically:

1. The Midwest ISO is given control over the operation and maintenance of all transmission facilities transferred to its control;

2. The Midwest ISO is given the authority to require generation owners to redispatch generation if necessary for the reliable operation of these facilities;

3. Owners of generation are required to coordinate with the Midwest ISO schedules of generation where the generation could affect transmission reliability or capability;

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[29] As security coordinator, the RTO will assume responsibility for: (1) performing load-flow and stability studies to anticipate, identify and address security problems; (2) exchanging security information with local and regional entities; (3) monitoring real-time operating characteristics such as the availability of reserves, actual power flows, interchange schedules, system frequency and generation adequacy; and (4) directing actions to maintain reliability, including firm load shedding.

4. Owners of generation are required to offer to provide the necessary ancillary services and also to offer to redispatch their generation;

5. The Midwest ISO is authorized to direct the Transmission Owners to take actions necessary to maintain transmission reliability, and the Transmission Owners are subject to severe penalties for noncompliance;

6. The Midwest ISO is authorized to order the construction of transmission facilities (subject to dispute resolution procedures and necessary regulatory approvals); and

7. The Midwest ISO will function as the security coordinator for the ISO and, thus, will monitor the transmission system to better ensure reliable operations and enhance overall transmission system reliability.

Consistent with the Commission's decision approving an ISO for the New England Power Pool, the Midwest ISO will exercise virtual control over operations. *New England Power Pool*, 79 FERC ¶ 61,374 at 62,588 (1997). The Midwest ISO will not physically change the status of switches or take other similar actions.[30] Rather, the Midwest ISO will direct the Transmission Owners to take lines, transformers and other transmission facilities in and out of service and employees of the Transmission Owners will perform the switching functions at existing control area centers. These field-related functions do not need to be conducted by Midwest ISO employees in order for the Midwest ISO to perform its role as being the primary entity responsible for the functional operation of those facilities operated at 100 kV and above. This arrangement implies "functional control" of the transmission system.

The Midwest ISO will operate a transmission security center to control operation of the Midwest ISO's transmission system and will not operate as a single generation control

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[30] Appendix E to the Midwest ISO Agreement, Article III, Section D, provides that the Owners who are control area operators shall continue to operate their control areas for local generation control and economic dispatch purposes. Appendix E of the Midwest ISO Agreement at 158.

area for the region. The costs associated with converting the multiple control areas within the Midwest ISO to a single control area would be substantial. In contemplating formation of the Midwest ISO, the Transmission Owners felt that the benefits of forming the ISO could be realized without incurring the vast expenditures required in consolidating control areas. The Midwest ISO was not intended to emulate the existing pre-Order No. 888 tight power pool structure utilized by the Pennsylvania-New Jersey-Maryland Power Pool. Therefore, the Transmission Owners that operate generation control areas today will continue to do so (excluding those owners in the Wisconsin ATC LLC) and will balance load and generation in their control areas. However, the Midwest ISO will operate a single transmission-reliability entity for the region.

In the Midwest ISO Order, the Commission noted that the Midwest ISO was unique from its extant sibling ISOs inasmuch as it did not propose to operate a NERC-recognized control area. Nevertheless, the Commission found that the Midwest ISO's operational control over all transmission facilities at 100 kV and greater provided reasonable control of the transmission system. Midwest ISO Order at 62,161. Nothing in Order No. 2000 casts any cloud on the continuing vitality of the Commission's prior conclusion finding the Midwest ISO exercises sufficient operational control over the transmission system. In conclusion, despite not operating as a single control area, the Midwest ISO fully complies with the operational authority requirements of Order No. 2000.

Security Coordination

Appendix E to the Midwest ISO Agreement defines the Midwest ISO's role as security coordinator for the transmission systems subject to its functional control. In this

role, the Midwest ISO is required to periodically perform load-flow and stability studies of the transmission system to identify and address security problems. The Transmission Owners and the ATC LLC will continue to monitor their own control areas for system security and will be responsible for identifying and addressing local security problems. The control area operator is the first line of defense in taking action to address localized security matters. The control area operators of the Transmission Owners will continuously provide the Midwest ISO with all data required to assess the security of the transmission system consistent with NERC, or its successor organization requirements, and regional reliability requirements.

The Midwest ISO will also exchange necessary security information with other non-member control areas, independent transmission system operators, and regional reliability councils consistent with NERC and regional requirements. In addition, the Midwest ISO will monitor real-time data to determine whether any control areas are experiencing generation capacity deficiencies. If a generation capacity deficiency event threatens the security of the system, the Midwest ISO will take appropriate action, including, if necessary, ordering the shedding of firm load.

System Emergency Situations

The Midwest ISO will work with the Transmission Owners, appropriate state agencies, regional reliability councils, and other security coordinators to develop regional security plans and emergency operating procedures. The Midwest ISO will, in coordination with its Members and the Advisory Committee, and in compliance with applicable state and federal laws and standards, develop, and from time-to-time update, procedures for

responding to emergencies ("Emergency Procedures").[31] The Emergency Procedures will be provided to all Members and will be made available to the public when completed.

Emergency Procedures

The Emergency Procedures will include procedures for responding to specified critical contingencies. The Midwest ISO will continuously analyze issues that may require the initiation of emergency response actions. Such analysis will be made at the Midwest ISO's initiative or at the request of Members, regional reliability councils, or other independent system operators or control areas. The Emergency Procedures will be amended to include any changes or additions resulting from such analysis. The Emergency Procedures will have provisions for system restoration, including priority restoration of off-site power to nuclear generating facilities.

The Midwest ISO will direct the response to any emergency on the Midwest ISO transmission system pursuant to the Emergency Procedures. Individual Transmission Owners, transmission customers, and control areas are required to carry out the required emergency actions as directed by the Midwest ISO, including the ultimate shedding of firm load if required for regional security. After the conclusion of an emergency condition, any affected entity that disagrees with the Midwest ISO's handling of the emergency may resolve that disagreement pursuant to the dispute resolution procedures of Appendix D to the Midwest ISO Agreement or the Midwest ISO Tariff, as appropriate.

In the Commission's Midwest ISO Order, the FERC confirmed the Midwest ISO's role as the security coordinator and further stated that the proposed duties and obligations of

[31] Emergency Procedures are currently being developed and have not yet been defined in detail.

the Midwest ISO security coordination function should be performed by an entity that is independent of market participants. Midwest ISO Order at 62,158. The Midwest ISO fully meets the independence criteria provisions of RTO Characteristic 1 as described herein and is therefore in compliance with the Commission's requirement of security coordination being performed by an independent entity.

The Commission stated, "in the course of performing these reliability related functions the Midwest ISO in its role of Security Coordinator could become privy to considerable amounts of commercially sensitive information." *Id.* The Midwest ISO believes the Commission was speaking in the context of commercially sensitive information related to generation markets. The Midwest ISO Standards of Conduct supplement the Midwest ISO's duty to maintain confidentiality of all types of commercially sensitive information, including items pertinent to transmission or generation.

With respect to emergency procedures, the Commission required the Midwest ISO to file its Emergency Procedures in order to prevent the curtailment of firm customers 60 days prior to the Midwest ISO Transfer Date. The Midwest ISO intends to meet this requirement. The Midwest ISO will be the NERC security coordinator for the transmission facilities that it controls and therefore complies with the security coordination requirements of Order No. 2000.

3. The Effect Withdrawal Has on the Operational Authority Characteristic

The Midwest ISO currently meets the standards inherent in the operational authority characteristic set out in Order No. 2000. As currently structured, it has the ability to control operations, perform and assist in security operations, respond to system emergencies, and

implement emergency procedures. As discussed throughout this filing, if Illinois Power, ComEd, and Ameren are allowed to withdraw, the Midwest ISO's ability to efficiently execute this authority will be compromised.

D. The Short-Term Reliability Characteristic

1. Order No. 2000 Compliance Requirements

The fourth proposed characteristic of an RTO is that it must have exclusive authority for maintaining the short-term reliability of the transmission grid under its control. In Order No. 2000, the Commission identified four basic short-term reliability responsibilities of an RTO: (1) the RTO must have exclusive authority for receiving, confirming and implementing all interchange schedules; (2) the RTO must have the right to order redispatch of any generator connected to transmission facilities it operates if necessary for the reliable operation of these facilities; (3) when the RTO operates transmission facilities owned by other entities, the RTO must have authority to approve and disapprove all requests for scheduled outages of transmission facilities to ensure that the outages can be accommodated within established reliability standards; and (4) if the RTO operates under reliability standards established by another entity (*e.g.*, a regional reliability council), the RTO must report to the Commission if these standards hinder its ability to provide reliable, non-discriminatory and efficiently priced transmission service. Order No. 2000 at 31,092.

2. Midwest ISO Conformance with the Short-Term Reliability Characteristic

With respect to the four basic short–term reliability responsibilities of an RTO, the Midwest ISO will conform to each of these requirements as follows based on its original Section 203 filing and the Midwest ISO Order:

Interchange Scheduling

According to Article I, Section A.3 of Appendix E to the Midwest ISO Agreement, the Midwest ISO shall implement and administer the Midwest ISO Tariff applicable to its transmission system. The Midwest ISO Agreement at 149. All requests for transmission service must be made with the Midwest ISO according to the terms of the Midwest ISO Tariff. As the sole administrator of its Tariff, the Midwest ISO shall have the exclusive authority for receiving, confirming and implementing all interchange schedules.

Redispatch Authority

The congestion management protocols described under Function 2 – Congestion Management described herein specify the approach the Midwest ISO will employ when exercising redispatch authority to maintain short-term system reliability. Section 30.1 of the Midwest ISO Tariff requires all network customers to redispatch network resources when so directed by the Midwest ISO. Initially, the Midwest ISO will use the procedures set forth in Attachment K of the Midwest ISO Tariff not only to accommodate existing firm transactions, but also to maintain short-term reliability. Attachment K to the Midwest ISO Tariff outlines the Midwest ISO's congestion relief mechanisms for Day 1 of operations. Redispatch costs incurred in order to maintain existing firm service, including bundled retail load, are distributed to all Transmission Customers in the Midwest ISO. There are two options available for providing new firm transmission service – reselling transmission rights and generator redispatch. The Midwest ISO will facilitate actions by generation and customers with the information necessary for the customer to make bilateral arrangements with the generators to relieve the constraint. In compliance with the Commission's directive in the

Midwest ISO Order, the Midwest ISO expects to deploy a more sophisticated congestion management system but will retain the absolute right to order redispatch when necessary to maintain short-term system reliability.

Transmission Maintenance Approval

The Midwest ISO's process for approval of transmission maintenance is based on Appendix E to the Midwest ISO Agreement and is summarized below. With respect to planned transmission maintenance, the Midwest ISO's approval is required for all planned maintenance of facilities in the transmission system. The approval process will be as follows:

- All Transmission Owners shall submit their planned transmission maintenance schedules to the Midwest ISO for a minimum of a rolling one (1)-year period. The planned maintenance schedules shall be updated daily. Planned transmission maintenance requests shall be submitted to the Midwest ISO for its approval at least two (2) weeks in advance of an outage.

- The Midwest ISO shall determine if, and the extent to which, such planned transmission maintenance requests affect ATC, ancillary services, the security of the transmission system, and any other relevant affects. This determination shall include appropriate analytical detail. Within two (2) business days of receiving a planned maintenance request, the Midwest ISO shall either approve the request or deny the request and provide an acceptable time frame in which the maintenance can be performed. Failure by the Midwest ISO to act within the two (2)-day period shall be deemed as approval of the request.

- The Midwest ISO shall have the authority to revoke any previously approved planned transmission maintenance outages if forced transmission outages or other circumstances compromise the integrity or reliability of the transmission system. The Midwest ISO shall notify the owner of the decision to revoke approval of the maintenance as soon as possible after the circumstances arise that create the need for the revocation. If an owner incurs any additional costs associated with the deferred transmission maintenance, the owner shall be compensated for those costs pursuant to procedures adopted by the Midwest ISO, applied on a non-discriminatory basis to all owners and filed with the Commission.

- As part of its review process, the Midwest ISO shall identify planned transmission maintenance schedules that limit ATC and, if requested by a user, shall identify opportunities and associated costs for rescheduling planned maintenance to enhance ATC.

- The Midwest ISO shall be responsible for documenting all planned transmission maintenance requests, the disposition of those requests, and all data supporting the disposition of each request.

- With respect to unplanned and emergency transmission maintenance, the Midwest ISO shall coordinate with the owners to implement schedules for unplanned transmission maintenance. For emergency transmission maintenance, when conditions endanger the safety of employees or the public, or may result in damage to facilities, the Transmission Owners shall notify the Midwest ISO of such emergency maintenance. Approval by the Midwest ISO for such emergency transmission maintenance is not required.

Generation Maintenance

The Midwest ISO's process for coordinating generation maintenance is based on Appendix E of the Midwest ISO Agreement and is summarized below. The Midwest ISO did not evolve from a tight power pool, does not operate a single control area and does not have the "authority" to approve planned generation maintenance schedules for all generation throughout its region.

The Midwest ISO will coordinate the maintenance of generating units of the Transmission Owners and other generating units as appropriate to the extent such generation maintenance affects the transmission capability or transmission reliability of the Midwest ISO during emergency situations as follows:

- All Transmission Owners and users owning or controlling generation affecting Midwest ISO transmission capability or security shall submit their planned generating unit maintenance schedules to the Midwest ISO for a minimum of a rolling one (1)-year period. The planned maintenance schedules shall be updated daily. Such information will be kept confidential by the Midwest ISO.

- The Midwest ISO shall analyze a planned generating unit maintenance schedule to determine its effect on ATC, ancillary services, the security of the transmission system and any other relevant effects. The Midwest ISO shall inform a Transmission member or Transmission user if its maintenance schedule is expected to have an impact on the security of the transmission system.

- As part of its review process, the Midwest ISO shall identify generating unit maintenance schedules that limit ATC and shall identify opportunities and associated costs for rescheduling planned maintenance to enhance ATC. Transmission Owners or users, along with generators, shall be compensated for additional costs associated with rescheduling such planned generating unit maintenance pursuant to procedures adopted by the Midwest ISO, applied on a non-discriminatory basis to all owners and users, and filed with the Commission.

- The Midwest ISO shall be responsible for documenting all planned generating unit maintenance schedules, all schedule changes, and all studies and services performed with respect to planned generation maintenance.

- For members and users who are operators of nuclear generating facilities, the Midwest ISO shall enter into written agreements which define planned transmission and generating unit maintenance scheduling criteria, limitations and restrictions necessary to ensure the safety and reliability of such facilities.

3. The Effect Withdrawal Has on the Short-Term Reliability Characteristic

As previously submitted, the Midwest ISO has demonstrated that it has met the short-term reliability characteristic. Albeit, if Illinois Power, ComEd, and Ameren are allowed to depart, the Midwest ISO's ability to perform redispatch will be limited without the authority to redispatch the generating units of Illinois Power, ComEd, and/or Ameren. Its ability to perform interchange scheduling and affect transmission and generation maintenance will also be limited to that of the remaining Midwest ISO Members.

The functions described in this section clearly indicate the Midwest ISO has the exclusive authority for maintaining the short-term reliability of the transmission grid under its control. The Midwest ISO was formed prior to the issuance of Order No. 2000, but the

characteristics required of a compliant RTO are inherent in the underlying intent and documents that form the Midwest ISO. The Midwest ISO has demonstrated that as it is currently comprised: (i) it is independent of market participants, (ii) it has an appropriate scope and regional configuration, (iii) it has the operational authority for all transmission facilities under its control, and (iv) it has the exclusive authority to maintain short-term reliability. However, the Midwest ISO readily admits that for compliance with the characteristics to continue, the current membership composition of the Midwest ISO must be solidified.

IV. MIDWEST ISO CONFORMANCE WITH THE MINIMUM RTO FUNCTIONS

The Commission's Order No. 2000 requires that an RTO fulfill eight minimum functions. They are:

1. Tariff Administration;
2. Congestion Management;
3. Parallel Path Flow;
4. Ancillary Services;
5. OASIS Operation;
6. Market Monitoring;
7. Planning and Expansion; and
8. Interregional Coordination.

Order No. 2000 at 30,994. The manner in which the Midwest ISO fulfills each of these functions is discussed below.

A. The Tariff Administration Function

1. Order No. 2000 Compliance Requirement

The Commission's Notice of Proposed Rulemaking ("NOPR")[32] initially proposed the tariff administration standard as follows: the RTO must "administer its own transmission tariff and employ a transmission pricing system that will promote efficient use and expansion of transmission and generation facilities." Order No. 2000 at 31,106. In Order No. 2000, the Commission further specified that the RTO must "be the sole provider of transmission service [over the facilities under its control], and sole administrator of its own open access transmission tariff." *Id*. at 31,108 (bracketed material added). The RTO must have the sole authority to receive, evaluate, and approve or deny all requests for transmission service, and the RTO must have the authority to review and approve requests for new interconnections. *Id*. Customers under the RTO's tariff must not be charged multiple access fees for the recovery of capital costs for transmission service over facilities that the RTO controls. *Id*.

2. Midwest ISO Conformance with the Tariff Administration Function

The Midwest ISO meets FERC's tariff administration requirements. Article I, Section A.3 of Appendix E to the Midwest ISO Agreement provides that: "[T]he Midwest ISO shall implement and administer the Transmission Tariff applicable to the Transmission System."[33] Therefore, the Midwest ISO will be the sole administrator of its FERC-approved tariff. The Midwest ISO will be the entity with the sole authority to receive, evaluate, and approve or deny all requests for transmission service. The Midwest ISO will also have the

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[32] *Regional Transmission Organizations, Notice of Proposed Rulemaking*, 64 Fed. Reg. 31,390 (June 10, 1999), FERC Statutes and Regulations ¶ 32,541 (1999).

[33] Midwest ISO Agreement at 149. *See,* generally, Article IV of Appendix E at 158-159.

authority to review and approve requests for new generator interconnections. As discussed previously, the Midwest ISO is precluded from changing the price and revenue allocation provisions of the existing Midwest ISO Tariff during the transition period. In the Midwest ISO Order, however, the FERC specifically noted that the transition period, designed to avoid cost shifts, was an essential element of the creation of the Midwest ISO. Midwest ISO Order at 62,139. The Midwest ISO does have the authority to make tariff modifications in areas involving non-rate terms and conditions. Accordingly, given the FERC's approval of the Midwest ISO's basic organization, a limitation on the right of the Midwest ISO to make rate change filings should not be considered to be a defect in the ability of the Midwest ISO to qualify as an RTO.

3. The Effect Withdrawal Has on the Tariff Administration Function

As previously stated, the Midwest ISO will be the sole provider of transmission service over the facilities under its control and the sole administrator of its own tariff as required under Order No. 2000. However, if the transmission facilities of Illinois Power, ComEd, and/or Ameren are under control separate from those of the systems of the other Midwest ISO Members, then the calculation of ATC and the evaluation of service requests will require more inter-RTO coordination than that currently contemplated given the Midwest ISO's current configuration in order to properly recognize all limits in these evaluations. If regional flowgates are not updated or synchronized as transactions are granted within each RTO, limits may not be properly detected. This will result in emergency redispatch costs or transmission loading relief ("TLR") due to over-selling that would not otherwise occur. The Midwest ISO would still be capable of conformance with the tariff

administration function, but this role would be more challenging with the facilities of Illinois Power, ComEd, and/or Ameren under a different entity for the purposes of tariff administration. This creates more "seams issues" and requires coordination that would otherwise not be necessary.

B. The Congestion Management Function

1. Order No. 2000 Requirement

The Commission states that an RTO must ensure the development and operation of market mechanisms to manage congestion. The responsibility for operating these market mechanisms must reside either with the RTO itself or with another entity that is not affiliated with any market participant. Order No. 2000 at 31,126. The mechanism selected by the RTO must provide all transmission customers with efficient price signals regarding the consequences of their transmission use decisions. In this regard, while not prescribing a specific congestion pricing mechanism, the Commission noted that "some approaches appear to offer more promise than others." *Id*. The Commission further noted that "markets that are based on locational marginal pricing and financial rights for firm transmission service appear to provide a sound framework for efficient congestion management." *Id*. at 31,126-7. Finally, the Commission stated that a physical rights alternative to marginal pricing "may prove to be workable in regions where congestion is minor or infrequent, in other regions where congestion is more of a chronic problem, it may not be workable." *Id*.

2. Midwest ISO Conformance with the Congestion Management Function

Midwest ISO's Original Filing on Congestion Management

In its initial filing dated January 15, 1998, the Midwest ISO proposed a congestion management methodology as set forth in Attachment K to its Tariff. This methodology envisions two types of redispatch to minimize congestion: (1) Midwest ISO mandated redispatch to effectuate existing firm service obligations and to maintain reliability; and (2) a bid posting format for new firm service. Non-firm transactions affected by congestion would be curtailed unless the transacting parties were to accept cost responsibility for a redispatch solution identified by the Midwest ISO.

Since the time of the Midwest ISO's original filing and FERC's subsequent conditional approval of the Midwest ISO, the Commission by its Order No. 2000 articulated additional requirements associated with RTO congestion management function. One area that received new definition from FERC in Order No. 2000 was the requirement for a market-based congestion management methodology which will maximize the efficient use of the transmission system while sending the appropriate price signals to market participants. *Id*. at 31,165.

FERC Order on Midwest ISO Congestion Management Approach

In the Midwest ISO Order, the Commission found that the Midwest ISO's congestion management proposal generally satisfied Principle No. 6 (*i.e.*, the ISO should identify constraints on the system and be able to take operational actions to relieve those constraints within the trading rules established by the governing body). Midwest ISO Order at 62,162. The Commission also found the Midwest ISO's proposal to prevent curtailment of firm

service by purchasing redispatch services from generators to be a reasonable initial approach; however, the Commission directed the Midwest ISO to provide additional information regarding (i) the amount of capacity generators required to bid under different system conditions, (ii) the rate they would be allowed to charge and (iii) under what conditions, if any, transmission loading relief would be used. *Id*. at 62,163-4.

With respect to providing new firm service, the Commission found that the Midwest ISO's proposal to provide new service by facilitating redispatch and resale of transmission rights to be a reasonable initial approach. While the Commission approved this concept as an initial solution, concerns were expressed regarding the transaction costs, and the Commission directed the Midwest ISO to evaluate the cost issues over the first eighteen (18) months of operation and make recommendations in the event it becomes too cumbersome and costly. *Id*. at 62,164.

Day 1 – Congestion Management Approach

As preparation continues for initial operations scheduled for November 2001, the Midwest ISO and its stakeholder committees have begun the task of evaluating alternatives that might be implemented as a long-term solution to congestion management within the Midwest ISO. It has been determined by the stakeholder committees that in order to facilitate a scheduled market trial date of June 1, 2001 and a functional operational date of November 1, 2001, the Day 1 approach will be a technically compliant, market-based approach, but it is not sufficiently dynamic to achieve the optimal long-term efficiencies envisioned under Order No. 2000.

Accordingly, the Midwest ISO's Advisory Committee approved a recommendation from its Policy Subcommittee that the Midwest ISO implement, as a Day 1 solution for congestion management, the same methodology which had been included in its already approved FERC filing. This was done with the understanding and knowledge that the Midwest ISO and its stakeholder committees were heavily involved in evaluating and choosing a more efficient long-term solution that would be implemented in accordance with the Midwest ISO Order no later than eighteen (18) months after start of initial operation.

Long-Term Congestion Management Status

With the confidence that the recommendation approved by the Advisory Committee as described above would be implemented consistent with the Midwest ISO's start-up schedule, the Midwest ISO staff and the stakeholder committee (specifically the Policy Subcommittee) have returned to the study and evaluation of long-term congestion management solutions for the Midwest ISO.

In an effort to consider all appropriate alternatives, these groups researched existing implementations in North America and derivative approaches. Specific attention was directed at the manner in which systems might be operated in the Midwest ISO's region. After considerable research and discussion, the alternatives available were narrowed to Locational Marginal Pricing ("LMP") and the physical flowgate methodologies.

In the case of LMP, there was a considerable amount of concern over the fact that most existing implementations of this method were in regions that were (and have been for some time) operated as tight power pools. There was no empirical data to suggest how this implementation would work in a multi-control area, decentralized dispatched region, such as

the Midwest ISO. Estimates of the costs inherent in implementing LMP in a multi-control area setting further compounded consideration of this method.

Serious concerns were also expressed over the fact that there are no current implementations of the physical flowgate methodology to observe and evaluate. While these concerns dominated several debates and discussions held over many months, the proponents among stakeholders for each method seemed to become more convinced in their belief that their method was the only answer. In an effort to resolve the differences and facilitate a final vote and selection by the Midwest ISO's Advisory Committee, a full day congestion management summit was conducted on July 19, 2000, in cooperation with ELCON, an industry interest group in Chicago.

Proponents and their consultants put on detailed presentations and answered questions from approximately 150 attendees. When the Advisory Committee met again to vote on this subject, the vote was delayed on a motion by the state regulatory representatives. As a result, the Advisory Committee directed the Policy Subcommittee to attempt to develop a "hybrid method" of congestion management that would combine the desirable features of both methods while eliminating, or at least limiting, the perceived problems found in each methodology.

After six weeks of stakeholder work on the issue, the Policy Subcommittee reported back to the Advisory Committee that they indeed felt that such a hybrid solution was worthy of implementation for the Midwest ISO. Concurrently, with the stakeholder-led evaluation, the Midwest ISO staff undertook a review of the possibilities of a hybrid solution from an operational and cost perspective. As a result, the Midwest ISO staff came up with a similar

but separate conclusion.

As a result of these dual recommendations to the Midwest ISO Advisory Committee, the Midwest ISO staff was requested to begin work to fully define, specify, procure and implement a hybrid congestion management solution. This project was well underway with the involvement of Midwest ISO staff (as project leaders), a stakeholder advisory group representing all member segments, and three consultants. L.E.C.G. and Tabors Caramanis & Associates were engaged to act in concert as the economic consultants, and KEMA Consulting was charged with providing additional technical support. However, given the concerns regarding withdrawals facing the Midwest ISO, the Midwest ISO's senior management decided it would be prudent to put the long-term congestion management project on hold until more is known regarding Midwest ISO's financial future. The Midwest ISO staff intends to provide a technical feasibility assessment to determine the operating and application procedures necessary to implement the hybrid approach and believes there is still ample time to solidify the hybrid approach within the timeframe required by the Commission.

3. The Effect Withdrawal Has on the Congestion Management Function

Midwest ISO's Day 1 implementation of congestion management will prevent curtailment of firm service by purchasing redispatch services from generators and will provide new service by facilitating redispatch and resale of transmission rights where necessary. As explained in the Affidavit of Jeffrey R. Webb, which was attached to the Midwest ISO's Intervention and Protest to Withdrawal Notice of Exelon Corporation, et al. as Attachment C in Docket No. ER01-780-000, the authority of the Midwest ISO to direct

redispatch of critical units will not exist if the units are under the control of a separate RTO. Recent real-time events show that there is a strong relationship between congestion in the MAIN region and the dispatch of units belonging to Illinois Power and Ameren. Redispatch coordination between Ameren and Illinois Power can be required to resolve congestion.

As also explained by Mr. Webb, real-time loading relief has been required on Illinois Power facilities in the recent past. During the summer of 2000, NERC TLR logs indicate that TLR was called on the Illinois Power Coffeen to Roxford 345 kV line (for the outage of the 345 kV Mt. Vernon-Newton tie between Ameren and Illinois Power) twenty-five (25) times from July through September. Loading of this flowgate can be affected by redispatch of units at several generating stations owned by Ameren (Coffeen, Taum Sauk, Osage), and Illinois Power (Wood River, Stallings, Baldwin). Other loading limits that have occurred on Illinois Power facilities in the past and are listed on the MAIN Transmission Loading Relief Log are the Sidney 345/138 kV transformer, the Bunsonville-Eugene 345 kV line, and the Stallings 345/138 kV transformer. The management of these loading limits, as well as their longer term resolution, involves close coordination of possible operating procedures, redispatch, and planning between the systems with which Illinois Power is so heavily interconnected.

In conclusion, the Midwest ISO believes that its existing congestion management provisions, particularly as they relate to facilitating new service, are in technical compliance with the requirements of Order No. 2000, and include the efforts to employ a Day 1 solution already approved by the Commission. The Midwest ISO and its members, however, appreciate that technical compliance is not the goal of Order No. 2000 and have, therefore,

embarked on the selection of a long-term method to be implemented. Even though this project is on hold, the Midwest ISO believes there is sufficient time for implementation of the hybrid method in accordance with the Commission's timetable and will meet the goals of Order No. 2000. The open, inclusive process by which this two-part solution has been embarked upon by the Midwest ISO further ensures that the result will be consistent with both the intent of the Commission as described in Order No. 2000 and the wishes of the bulk of the market participants that will be subject to its operation. However, withdrawal by Illinois Power, ComEd or Ameren will have a limiting effect on the Midwest ISO's ability to efficiently manage congestion for the Midwest region.

C. The Parallel Path Flow Function

1. Order No. 2000 Compliance Requirement

The Commission has determined that, "an RTO should develop and implement procedures to address parallel path flow issues within its region and with other regions." Order No. 2000 at 31,129. The Commission requires these procedures to be in place for internal flows on the date of initial operation and within three years from operation for interregional matters. *Id*. at 31,130.

2. Midwest ISO Conformance with the Parallel Path Flow Function

Size alone will in large part allow the RTO to internalize most, if not all, of the effects of parallel path flows in its scheduling and pricing process within a region. As presently structured, and given the pending addition of many of the transmission-owning entities within MAPP, the Midwest ISO will internalize significant regional flow issues within its region. Due to its substantial geographic reach, the Midwest ISO will internalize

many of the loop flows that exist in the Eastern Interconnection. This is one of the major benefits of RTO formation. By having plenary control over tariff administration, including ATC calculations, security coordination and authority over congestion management protocols, the Midwest ISO, in its current scope and configuration, is in a secure position to carry out the function of internalization of the loop flows and management of parallel path issues.

The Midwest ISO does internalize loop flows under the Commission requirement that, "an RTO should develop and implement procedures to address parallel path flow issues within its region and with other regions" and that parallel path flows be internalized to a large extent. *Id*. at 31,129. Internalization of the loop flows and parallel path issues are adequately addressed given the Midwest ISO's current scope and size; however, the potential loss of major transmission facilities in Illinois and eastern Missouri poses significant parallel path issues should these systems move to an adjacent RTO that are not as tightly interconnected to the Midwest ISO.

3. The Effect Withdrawal Has on the Parallel Path Flow Function

As Mr. Jeffrey R. Webb discussed in his Affidavit, the transmission systems of Illinois Power, ComEd and Ameren are heavily interconnected with each other, and with the systems of other Midwest ISO members in ECAR, MAIN, and to the northwest of Illinois in the MAPP region. There are strong parallel path flows between these systems that, under the existing Midwest ISO alignment, are largely internalized. Conversely, there are no natural or effectively manageable seams between these Illinois systems, or between these systems and the systems to the north and west of Illinois. The high degree of physical interconnections

Illinois Power has with current Midwest ISO members amplifies this point.

In Mr. Webb's description of these systems, only four of Illinois Power's 57 bulk power interconnections with other systems are with non-Midwest ISO members. Illinois Power's 53 bulk power ties to Midwest ISO member companies include 41 interconnections at 138 kV, two at 230 kV, and ten at 345 kV. *Id*. Of these ties, eight are with ComEd and 40 are with Ameren. While the vast majority of the bulk power interconnections of Illinois Power are with either Ameren or ComEd, the ComEd and Ameren systems link the Illinois grid to transmission systems in Wisconsin, and the region served by MAPP. The ComEd service territory is situated in the northern one-third of Illinois. ComEd has a total of 31 bulk power interconnections, ten of which are with Ameren and Illinois Power. Six 345 kV lines and two 138 kV lines tie the ComEd system to systems in Wisconsin and Iowa. The southern interface of Wisconsin's transmission grid is interconnected with the ComEd system through three 345 kV lines and one 138 kV line. ComEd ties extend to systems of the MAPP through three 345 kV lines and one 138 kV line. ComEd's system experiences heavy parallel path flows for many transfers involving Midwest ISO members to the north and west of Illinois and for imports to the Midwest ISO's systems from external areas. The Ameren system also experiences significant parallel path flows for transactions between Midwest ISO Member companies. These facts can be seen in the transaction participation factors of Table 2 in the Affidavit of Jeffrey R. Webb.

As is evident from the facts outlined above, the transmission systems of Illinois Power, ComEd, and Ameren are so physically interconnected with each other, and with the systems of other Midwest ISO Members, that a withdrawal by one or more will have a

substantial impact on the Midwest ISO's ability to adequately contain parallel path flows.

D. The Ancillary Services Function

1. Order No. 2000 Requirement

The Commission determined that an RTO must serve as the provider of last resort for all ancillary services[34] required by Order No. 888.[35] All market participants, however, would have the option of self-supplying or acquiring certain ancillary services from third parties.

The RTO may fulfill its ancillary services obligations through a variety of mechanisms, including contractual arrangements, indirect or direct control of specified generation facilities, or market mechanisms. However, regardless of the method of provision, the ancillary services must be included in the RTO administered tariff so that transmission customers will have access to one-stop shopping for transmission service. *Id*. at 31,141. Accordingly, the RTO must decide the minimum required amounts of each ancillary service and, if necessary, the locations at which these services must be provided.

The Commission has required that an RTO must ensure that its transmission customers have access to a real-time balancing market that is developed and operated by either the RTO itself or another entity that is not affiliated with any market participant. Commenters argued that it would be difficult if not impossible for an RTO that is not a

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[34] The six ancillary services are: 1) Scheduling; 2) Reactive Supply; 3) Regulation and Frequency Response Service; 4) Energy Imbalance Service; 5) Operating Reserve - Spinning Reserve; and 6) Operating Reserve - Supplemental Reserve Service. Order No. 888 at 31,703. The Commission's Order No. 2000 requirement is found at 31,140-2.

[35] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs., Regulation Preambles ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12274 (March 4, 1997), FERC Stats. & Regs., Regulation Preambles ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 62 Fed. Reg. 61,688 (December 9, 1997), 81 FERC ¶ 61,248 (1997*), order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998).

control area operator to operate an efficient real-time balancing market. However, the Commission was not persuaded and directed "each RTO to be the security coordinator for its region and to have, at a minimum, the authority to exercise a combination of direct and functional control over facilities within its region. Thus, even if an RTO is not a control area operator, it should have sufficient operational authority to ensure that a real-time balancing market can be implemented." *Id*. at 31,142. Although the Commission did not rule out the possibility that real-time balancing could be performed by an unaffiliated third-party, it observed that "because this function is so time sensitive and requires such close coordination with the actual dispatch, experience may ultimately show that it cannot be performed to a high degree of efficiency unless it is made part of the RTO's central or hierarchical dispatch activities." *Id.*

2. Midwest ISO Conformance with the Ancillary Services Function

Pursuant to Article VI of Appendix E of the Midwest ISO Agreement, the Midwest ISO shall offer to provide all ancillary services as defined and required under the Midwest ISO Tariff. Midwest ISO Agreement at 161-162. As part of its scheduling function, the Midwest ISO will ensure that every scheduled transaction is supported by the required ancillary services and will deny any scheduling request where the required ancillary services have not been arranged.

The Midwest ISO will serve as the provider of last resort for all ancillary services required by Order No. 888 and subsequent orders. Because the Midwest ISO will not be a control area, its role as <u>provider</u> rather than <u>seller</u> will be to secure service that customers will be required to pay for, but that payment will be to the supplying entity. The Midwest ISO's

role will be that of an agent in these transactions and not as a principal. All market participants will have the option of self-supplying or acquiring certain ancillary services directly from third parties. It is the Midwest ISO's current intention to involve an independent third-party entity in the creation of markets for ancillary services upon which the Midwest ISO can draw to fulfill its obligations. Again, even if the ancillary services are acquired through the Midwest ISO, the Midwest ISO will be acting as an agent for the supplying entity.

All Transmission Owners and Users that own generation within the Midwest ISO, as those terms are defined in the Midwest ISO Tariff, shall be required to offer to provide ancillary services to the extent required under the Midwest ISO Tariff. For FERC regulated public utilities, the charges by the generation owners for such ancillary services shall be in accordance with FERC accepted or approved rate schedules.

The FERC was concerned that access to the real-time balancing market would be necessary to end differences between energy imbalance and inadvertent interchange services. Pursuant to Article Three, Section II, Paragraph E of the Midwest ISO Agreement, the Midwest ISO is authorized to provide ancillary services. Midwest ISO Agreement at 63 and Appendix E at 161-162. The Midwest ISO Tariff as originally filed did not provide the mechanisms for a real-time imbalance service. The Midwest ISO and the Transmission Owners are currently working in tandem with other interested market participants to develop a Midwest ISO Schedule 4 – Energy Imbalance Service. The Midwest ISO's technical staff, working in conjunction with the Operations Support Group, has published a white paper dedicated to the implementation details of a real-time energy imbalance market. This white

paper has been circulated to a wide array of stakeholders and other interested market participants in order for the Midwest ISO to obtain feedback on the technical approach for implementing a real-time energy imbalance market consistent with provisions of Order No. 2000. It can be viewed on the Midwest ISO home page at http://extranet.midwestiso.org under the heading "Operations SG."

The intent of the Midwest ISO is to put the hourly inadvertent interchange imbalances between control areas and energy imbalances within a control area on equal footing. Both types of imbalances would be accounted for and settled using the same market clearing price. Sorting out the options for determining the market clearing price within an hour has proven to be somewhat problematic for the Midwest ISO. As the Midwest ISO did not evolve from a tight power pool and currently does not operate a pool, it has been a challenge for the Midwest ISO to develop a mechanism for determining the market clearing price. The Midwest ISO also realizes the solution for real-time balancing is closely tied to the long-term solution for dealing with congestion management. However, by Day 1 of operations, the Midwest ISO intends to comply with this requirement through offering Midwest ISO – Schedule 4, Energy Imbalance and Inadvertent Interchange Service under its Tariff. At the present time, the Midwest ISO also intends to facilitate the involvement of an independent market operator to create the mechanisms to run a real-time energy balancing market and is exploring new "cash out" imbalance provisions between RTOs.

The Midwest ISO views the comparable treatment of both loads and control areas to be consistent with the Order No. 2000 requirement of providing access to a real-time balancing market that is developed and operated by either the RTO itself or another entity that is not affiliated with any market participant. Once finalized, Schedule 4 will be filed with the Commission and incorporated into the Midwest ISO Tariff in order to comply with Order No. 2000 requirements.

3. The Effect Withdrawal Has on the Ancillary Services Function

The Midwest ISO meets the characteristics set forth in the ancillary services function of Order No. 2000. The Midwest ISO would still have the ability to conform with the requirements of the ancillary services function without the facilities of Illinois Power, ComEd, and/or Ameren, although without these facilities, the Midwest ISO's ability to perform this service would be diminished. Without the use of the Illinois Power, ComEd or Ameren generating units, the offering of various ancillary service options will be quite limited.

E. The OASIS Function

1. Order No. 2000 Requirement

Order No. 2000 requires that an RTO must be the single Open Access Same-Time Information System ("OASIS") site administrator for all transmission facilities under its control and independently calculate TTC and ATC. *Id*. at 31,144-5. Moreover, Order No. 2000 requires that the RTO calculate ATC values based on data developed partially or totally by the RTO (*i.e.*, the RTO cannot accept the Transmission Owner's ATC calculations or base ATC calculations on data provided exclusively by the Transmission

Owner). *Id*. at 31,145. Indeed, the Commission holds that an RTO must be able to calculate ATC independently upon the commencement of service. In the event that there is a dispute over ATC values, the RTO's determination must govern pending conclusion of the Alternative Dispute Resolution ("ADR"). *Id*.

2. Midwest ISO Conformance with the OASIS Function

The Midwest ISO complies with this requirement. Article Three, Section II, Paragraph D of the Midwest ISO Agreement provides that the Midwest ISO shall implement an OASIS.[36] Midwest ISO Agreement at 63. Appendix B - Planning Framework (Sections IV and V at 107-109) of the Midwest ISO Agreement also provides that the Midwest ISO is responsible for determining ATC based upon information filed by each Transmission Owner regarding the physical ratings of all of its equipment in the transmission system. It is the Midwest ISO's understanding that the Transmission Owners currently plan to provide flowgate ratings and their associated margins to the Midwest ISO for its Day 1 implementation. If so, the Midwest ISO will have protocols and expertise necessary to independently verify the flowgate data provided by Transmission Owners, and it will be in a position to do so by June 1, 2001. The Midwest ISO will develop its own flowgate margin criteria by June 1, 2002.

In the Midwest ISO Order, the Commission held that the Midwest ISO should independently verify data supplied by the Transmission Owners in calculating ATC. Midwest ISO Order at 62,154. The Commission found that the authority set forth in Appendix B attached to the Midwest ISO Agreement was adequate to allow the Midwest ISO

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[36] *See also,* Appendix E, Article I.A.7 at 150, which states "[t]he Midwest ISO shall be responsible for operations of OASIS system(s) in accordance with the Transmission Tariff."

to perform an independent verification of the ATC. Midwest ISO Agreement at 106-107. Moreover, in case of dispute, the Midwest ISO's determination of ATC will govern pending the outcome of ADR proceedings.

3. The Effect Withdrawal Has on the OASIS Function.

The Midwest ISO meets the characteristics set forth in the OASIS function of Order No. 2000. However, if the transmission facilities of Illinois Power, ComEd, and/or Ameren are under control separate from those of the systems of the other Midwest ISO Members, then the calculation of available transfer capability and the evaluation of service requests will require more inter-RTO coordination than that currently contemplated given the Midwest ISO's current configuration in order to properly recognize all limits in these evaluations. If regional flowgates are not updated or synchronized as transactions are granted within each RTO, limits may not be properly detected. This will result in emergency redispatch costs or TLR due to over-scheduling, that would not otherwise occur. The Midwest ISO would still be capable of conformance with the OASIS function, but this role would be more challenging with the facilities of Illinois Power, ComEd, and/or Ameren under a different entity for the purposes of OASIS implementation.

F. <u>The Market Monitoring Function</u>

1. Order No. 2000 Requirement

In Order No. 2000, the Commission affirmed the requirement that an RTO must have a market monitoring plan; however, in light of the different forms of RTOs that could be developed by market participants and the varying types of markets an RTO may be operating within its region, the Commission provided flexibility with respect to the scope of monitoring

that each RTO will perform. Order No. 2000 at 31,155. Order No. 2000 specifically provided that the monitoring function must include a periodic assessment of how markets operated by others (such as bilateral markets and unaffiliated power exchanges) affect RTO operations and vice versa. *Id*. at 31,156. The Commission was receptive to comments suggesting that it would be inappropriate for a for-profit RTO to monitor markets. Even with respect to ISOs that are engaged in the market, *e.g*. managing a spot energy market, commenters urged that the market monitoring function must be internally divorced from the operation functions of the ISO. *Id.*

However constituted, the monitoring plan must be designed to ensure that there is objective information about markets that the RTO operates. *Id*. The plan must also evaluate the behavior of market participants to detect behavior that adversely affects the ability of the RTO to provide reliable, efficient and non-discriminatory transmission service. *Id*. Finally, the monitoring plan must clearly identify any proposed sanctions or penalties and the specific conduct to which they would be applied and provide the rationale to support any sanctions, penalties or remedies (financial or otherwise) and explain how they would be implemented. *Id*.

2. Midwest ISO's Conformance with the Market Monitoring Function

The Midwest ISO's founding document is consistent with the Commission's Order No. 2000 directive on this subject. Article Eight, Section A of the Midwest ISO Agreement provides that "[t]he Midwest ISO shall develop monitoring procedures to be effective before the Transfer Date." Midwest ISO Agreement at 84. The Midwest ISO Agreement envisioned that the Midwest ISO may establish an independent monitoring function either

within the ISO or by contract with an independent entity. The objectives of the monitoring shall be "to determine if there are any attempts to create transmission constraints to exclude competitors, or any other behavior that undermines the provision of transmission service." *Id*.

The Midwest ISO's management believes the market monitoring function for its region (and possibly for multiple RTOs in the Eastern Interconnection) should be conducted by an independent third party. Preliminary discussions with third parties, such as the Indiana State Utility Forecast Group associated with Purdue University and the National Regulatory Research Institute associated with The Ohio State University, have been held concerning qualifications the market monitor should possess. While the Midwest ISO will only administer markets limited to the provision of transmission services, ancillary services and congestion management mechanisms, it may be that the pertinent markets to be monitored include bilateral markets and those markets operated by what could potentially be numerous unaffiliated power exchanges or energy market operators that could operate in the region.

On October 12, 2000, the Midwest ISO released a Request for Proposal ("RFP") for an Independent Market Monitor ("IMM"). The RFP was sent to a number of entities that expressed specific interest in providing this service. Proposals were received on November 15, 2000. The Midwest ISO is currently evaluating the nine proposals received in response to the RFP. Early in the first quarter of 2001, the Midwest ISO hopes to have the principals responding to the RFP formally present their proposals for further evaluation by the Midwest ISO. The Midwest ISO plans to name the IMM early in 2001 prior to the market trials planned for June 2001. It is the Midwest ISO's intent, based on a proposal

made in conjunction with the Cincinnati Collaborative Task Group, that other contemplated RTOs in the region (*i.e.*, SPP, GridSouth and the Alliance RTO) join the Midwest ISO in the joint sponsorship of the RFP. It is the Midwest ISO's belief that synergies and economies of scale can be achieved through a joint venture where the IMM can be co-funded by contracting with several adjacent RTOs. Representatives from GridSouth have indicated an interest in participating in the evaluation of the proposals and have not ruled out joint sponsorship of the independent market monitoring function on a contractual basis.

The Midwest ISO believes this entity should be independent of the RTO itself in order that it enjoy the greatest perception of objectivity. The IMM should monitor certain markets in adjacent RTOs as "the market" is not indigenous solely to a single RTO. The IMM must be an objective provider of information capable of honoring confidentiality agreements required in obtaining price sensitive information from energy market participants. The IMM would monitor market conditions and make suggestions for improvements; however, the IMM would not act in an enforcement role. The role of the IMM would be primarily one of reporting, and the advisory body function (comprised of multiple electric industry stakeholders) would monitor the IMM methodology and periodic reporting. The advisory body could also request specific studies or cases where market irregularities may be occurring. The Midwest ISO is actively pursuing an independent market monitoring function for the region that satisfies the Commission's requirements for market monitoring under Order No. 2000.

3. The Effect Withdrawal Has on the Market Monitoring Function

Because the Midwest ISO envisions an independent third party will monitor market conditions, withdrawal of Midwest ISO Members would not affect the implementation of this function.

G. The Planning and Expansion Function

1. Order No. 2000 Requirement

In Order No. 2000, the Commission required that the RTO must have ultimate responsibility for both transmission planning and expansion within its region. In this regard, the RTO must satisfy certain standards: 1) encourage market-motivated operating and investment actions for preventing and relieving congestion; 2) accommodate efforts by state regulatory commissions to create multi-state agreements to review and approve new transmission facilities; and 3) file a plan with the Commission with specified milestones that will ensure that the RTO meets the overall planning and expansion requirements no later than three years after initial operation. Order No. 2000 at 31,157.

2. Midwest ISO Conformance with the Planning and Expansion Function

Article Three, Section I, Paragraph C of the Midwest ISO Agreement provides that the Midwest ISO shall engage in such planning activities as are necessary to fulfill its obligations under the Midwest ISO Agreement and Tariff. Midwest ISO Agreement at 61. Article Four, Section I, Paragraph C of the Midwest ISO Agreement further provides that "[e]ach Owner shall use due diligence to construct transmission facilities as directed by the Midwest ISO." Midwest ISO Agreement at 71. Accordingly, the Midwest ISO has the capability to satisfy the transmission planning and expansion criteria for an RTO.

Appendix B of the Midwest ISO Agreement provides in detail the planning function of the Midwest ISO, which is vested in the Midwest ISO planning staff. Planning is to be a collaborative process with Transmission Owners, Users and other interested parties. Section VI of Appendix B of the Midwest ISO Agreement further provides an independent right of the Transmission Owners to develop expansion plans. Midwest ISO Agreement at 110-113. The Midwest ISO views this "bottoms-up, top down approach" as being advantageous to all stakeholders. The Transmission Owners will develop their local plans, which will then be coordinated with the Midwest ISO planning staff to develop an overall Midwest ISO transmission plan. This process will allow for all projects with regional impact to be analyzed and justified on their technical and economic feasibility. This will allow solutions and alternatives to be explored and developed on a regional basis.

One of the major benefits of RTOs is their ability to address long-term reliability through the transmission planning process. The Midwest ISO will play a key role in its overall responsibility for coordinating regional transmission system planning and expansion once it becomes operational. In this role, the Midwest ISO shall determine what new facilities, if any, are required to satisfy a transmission service request. The Midwest ISO also will develop and adopt a transmission plan for meeting the transmission needs of all stakeholders. The transmission plan will be based not only on information from the Transmission Owners' planning departments but also on the input from a special stakeholder advisory committee on planning. The Midwest ISO's planning function will, therefore, help fulfill the mission of providing customers with independently evaluated, non-discriminatory access to secure, reliable, and adequate transmission service. Transmission expansion will

occur in response to requests for new firm service and through the long-term planning process.

Expansions To Accommodate Service Requests

The Midwest ISO will evaluate all transmission service requests in accordance with the Midwest ISO Tariff. If the Midwest ISO determines that a request cannot be accommodated with existing facilities or through generation redispatch, then it will tender a facilities studies agreement to the transmission service requestor, consistent with the Midwest ISO Tariff.[37] Upon return of the signed agreement, the Midwest ISO planning staff will form an ad hoc planning committee consisting of representatives of the affected Transmission Owners and a member of the Midwest ISO planning staff, who will serve as the chair. The ad hoc committee will develop expansion alternatives and perform the described studies to determine the necessary facility expansions to service the transmission request.

Development And Adoption Of Transmission System Plans

The Midwest ISO has been assigned a clear and prominent role in a collaborative process to develop transmission system plans. The Transmission Owners are to each develop expansion plans for their transmission facilities utilizing their knowledge of their systems, their loads and load growth, if any, new generation sources and connections and confirmed or committed transmission requests. Each Transmission Owner will provide its plan to the Midwest ISO planning staff, along with modeling and supporting data, applicable planning criteria and any other relevant local parameters. Such individual plans must be compatible

[37] *See*, Section 19.4 of the Midwest ISO Tariff, which outlines expansion of the transmission facilities to accommodate transmission service requests.

with the ISO Plan described below and must be accepted by the Midwest ISO before implementation.

The Midwest ISO planning staff will then use the Transmission Owners' plans and supporting data, input from stakeholders on the Advisory Committee pertaining to planning, and all other appropriate sources of information to develop a comprehensive, ISO-wide transmission plan (the "ISO Transmission Plan"). This collaborative planning process is designed to ensure the development of the most efficient and cost-effective transmission plan to meet the obligations of the ISO and the needs of the stakeholders.

The ISO Transmission Plan must adhere to all applicable national, regional, state and local transmission system reliability criteria. The ISO Transmission Plan must also comport with applicable state and federal regulatory requirements and shall require that projects not be undertaken if it is expected that necessary approvals for construction and cost recovery cannot be obtained. If the ISO planning staff and any Transmission Owner's planning department cannot reach agreement on any element of the ISO Transmission Plan, the dispute will be resolved through the ADR procedures of the Midwest ISO Agreement. The Commission endorsed a similar use of dispute resolution procedures to resolve planning and expansion issues in *Pacific Gas & Electric Co.*, 80 FERC ¶ 61,128 at 61,433-34 (1997).

The planning staff will present the ISO Transmission Plan and alternative plans to the Midwest ISO Board for approval on at least a biennial basis. The ISO Transmission Plan must specifically identify needed construction, its timetable, cost and the party responsible for construction. To ensure that needed facilities are built, the ISO Transmission Plan must provide alternate construction arrangements; for example, if a designated Transmission

Owner is not financially capable of constructing or will suffer demonstrable financial harm from the construction. As a last default mechanism, all Transmission Owners, subject to applicable regulatory requirements, must share in the cost of the needed new facility unless some other entity expresses a desire to construct the facility. Once approved by the Board, the ISO Transmission Plan will be established as the plan for meeting the transmission needs of all stakeholders. The affected Transmission Owners must then make a good faith effort to design, certify and build facilities to fulfill the approved ISO Transmission Plan. The Board will allow Transmission Owners to optimize final design and timing of specific facilities if necessary to accommodate changing conditions, provided that any such changes are accepted by the ISO and comport with the approved ISO Transmission Plan. In short, the Midwest ISO will play the leading role with regard to transmission system planning and transmission system expansion consistent with the Commission's desires as specified in the RTO Order.

3. The Effect Withdrawal Has on the Planning and Expansion Function

The ability of the Midwest ISO to achieve the intent of Order No. 2000 with regard to expansion planning would be greatly diminished if unnatural seams are created between systems that are highly interconnected. Without a single entity coordinating the planning for such systems, the Commission has pointed out that the development of least cost plans that maintain or improve existing regional reliability levels, and that are not at odds with each other, cannot be ensured. The intertwined and heavily interconnected nature of the Illinois Power, ComEd and Ameren systems has been established above. Because of this, long-term relief of congested areas of these systems through expansion cannot be as efficiently directed for these systems if they are under the control of multiple RTOs.

Transfer of power into certain areas of the Midwest ISO transmission system have been documented as constrained, and in need of long-term planning solutions. Illinois Power facilities can limit transfer capabilities into other Illinois and Midwest ISO member companies as discussed below.

Mr. Webb's Affidavit in the ComEd withdrawal docket references the 2000 MAIN Summer Transmission Assessment Study, which evaluates transfer capability between and among the MAIN sub-regions and adjacent regions and sub-regions. Assessments of transfers between MAIN companies and ECAR are provided in this report, as well as between each of two ECAR sub-regions (ECAR-West and ECAR-East) and MAIN. The ECAR-West sub-region includes all of the companies in ECAR that are now members of the Midwest ISO and portions of the AEP-Indiana & Michigan transmission system and Consumers Power Company. These assessments indicate that Illinois Power facilities are limiting for transfers between ECAR West, ComEd and Ameren. The constrained element for these transfers is the 345 kV line between Illinois Power's Bunsonville substation and AEP's Eugene substation.

The study also concludes that transfers between any of the ECAR sub-regions and the SMAIN sub-region of MAIN are limited by the Ameren 138 kV line between E. W. Frankfort and W. Frankfort for contingency outage of the Illinois Power Baldwin-Mt. Vernon 345 kV line along with the Mt. Vernon transformer. The SMAIN sub-region includes the Central Illinois Light Company, Ameren, Columbia Water & Light, City Water Light and Power (Springfield, Illinois), Electric Energy Incorporated, Illinois Power and Southern Illinois Power Cooperative control areas.

As Mr. Webb discussed in his Affidavit, the Wisconsin WIRES interface reliability study, commissioned to evaluate solutions to providing adequate import capability to Wisconsin, identified seven ComEd reinforcements that would be needed to provide adequate capability. As Mr. Webb further explained, the study concluded that in order to provide proper diversity, import capability would need to be enhanced from both the west and the south. Solutions to constraints to the west were addressed by developing several alternative proposals for a new 345 kV transmission line on the western Wisconsin interface. Solutions to constraints from the south involved at least eight separate upgrades to parts of the ComEd system, ranging from circuit breaker upgrades to a possible new 345 kV line internal to the ComEd system.

These documented potential constraints, along with the previously described real-time requirements and solutions for loading relief on facilities interconnecting the Ameren, ComEd and Illinois Power systems, suggest that long-term solutions involving coordinated planning between these systems and those of other Midwest ISO systems will be required. Such planning will be less effective if resolved through seams agreements between RTOs instead of internally by the RTO itself.

H. The Interregional Coordination Function

1. Order No. 2000 Requirement

In Order No. 2000, the Commission identified that the coordination of activities among regions is a significant element in maintaining a reliable bulk transmission system and for the development of competitive markets. Order No. 2000 at 31,167. Thus, Order No. 2000 required an RTO to develop mechanisms to coordinate its activities with

other regions whether or not an RTO yet existed in these other regions. *Id.* The Commission directed RTOs to work closely with other regions to address interregional problems and problems at the "seams" between the RTOs. *Id.* The Commission did not mandate that RTOs have uniform practices but did state that reliability and market interface practices must be compatible among the RTOs. *Id.* Specifically, TLR and congestion management are both used to unload an overloaded transmission interface and, thus, must work together. *Id.* The Commission envisioned a uniform practice of regarding the two protocols as sequential steps, with TLR invoked only if congestion management does not work or an emerging condition requires immediate action. *Id.*

2. Midwest ISO Conformance with the Interregional Coordination Function

The Midwest ISO has been pursuing negotiation of the "seams issues" with adjacent entities that may become RTOs as an outgrowth of the FERC collaborative process which began in early 2000. Beginning with the continuation of the collaborative process as proposed by the Alliance Companies in Cincinnati, followed by the Missouri Commission's suggestion of continuation of the Kansas City collaborative, the Midwest ISO has expended much time and energy discussing the seams issues with other parties. As part of the Cincinnati process, ten key functions have been identified by the Seams Task Group and discussed during the course of numerous meetings held throughout the summer of 2000. The Seams Task Group includes representatives from consumer groups, marketers, transmission owners, state regulators and the Midwest ISO. The issues discussed include topics such as OASIS, "one-stop shopping," pricing reciprocity, transmission planning and generation interconnections, congestion management, ATC coordination, energy imbalance,

independence and governance, transmission as a business, timing and implementation, and market monitoring/market power mitigation. Security coordination has also been mentioned by the Alliance Companies as a function they view as a "seams issue." The Midwest ISO does not share this view and believes that the current NERC Operating Committee and Security Subcommittee are the proper forum for addressing "seams" between regional security coordinators.

During the summer months, several meetings were held in St. Louis and attended by representatives from the Southwest Power Pool, the Midwest ISO Transmission Owners and the Midwest ISO staff. Since that time, the discussions have expanded to include the Alliance Companies, GridSouth, and PJM. Reciprocity on pricing has been a major topic discussed at these meetings during the summer and remains an important threshold seams issue to the participants.

Given the breadth of the Midwest ISO's geographic range, particularly after the closing of the asset acquisition with MAPPCOR, the Midwest ISO is perfectly, perhaps uniquely, suited to perform a key role in the interregional coordination function. In the Midwest ISO Order, the Commission found that the Midwest ISO satisfied ISO Principle 10, which requires an ISO to develop mechanisms to coordinate with neighboring control areas. Midwest ISO Order at 62,165. Nothing in Order No. 2000 would appear to raise the bar for effectuating interregional coordination. Over the course of the coming months, the Midwest ISO will continue to negotiate and coordinate the seams issues with adjacent RTOs. The Midwest ISO has proposed, as part of the Cincinnati RTO collaborative, a joint venture where several RTOs can contractually agree to co-sponsor development of markets and the

market monitoring function building on the Alliance Companies proposal at the Cincinnati collaborative.

The task of interregional coordination of the seams should be accomplished by the Midwest ISO's operational date of November 1, 2001; however, it is a lengthy process and in the Midwest ISO's case, it involves several potential RTOs and other border entities (*i.e.*, TVA, SPP, the Alliance Companies, GridSouth, Southern, ISO New England, and even more recently, PJM). The representatives and Transmission Owners from the Midwest ISO have been very active in putting forth strawmen proposals which have been adopted by the group. They include long-term planning coordination, ATC coordination between RTOs, and recently, consensus was reached among several of the parties regarding the goals for electronic scheduling. Progress has also been made regarding reciprocity on pricing as previously mentioned. This issue may be difficult to resolve on an inter-regional basis among all RTOs participating in the discussions. Instead, bilateral arrangements between the RTOs would be a practical goal.

Independent market monitoring is an important RTO function where the Midwest ISO is attempting to garner support from all of the participating RTOs, with the exception of PJM which has already addressed this function on its own, in co-sponsorship on a contractual basis of the market monitoring function using the same entity for all RTOs in the region. This potential joint venture could take advantage of economies of scale and spread the costs for the market monitoring function over multiple RTOs encompassing the midwest and southern energy markets. GridSouth has expressed interest in participating in the review and

evaluation of the responses the Midwest ISO recently received in response to the Midwest ISO's IMM RFP.

The Midwest ISO has been very proactive in advocating practical solutions to mitigate the seams between the RTOs. The Midwest ISO realizes there are many more issues to be resolved. The Midwest ISO has brought a vast amount of technical expertise to the seams negotiation table in order to accomplish the task of interregional coordination. If more than one RTO is to exist in the Midwest, then the ultimate goal of these RTOs should be to operate and function as if there is one RTO from the transmission customer's perspective.

3. The Effect Withdrawal Has on the Interregional Coordination Function

The Midwest ISO has diligently progressed toward interregional coordination with adjacent RTOs and believes that these efforts will culminate in seamless transactions. However, open-ended RTO member withdrawal will only frustrate the interregional goals set out above and prolong resolution and agreement to seams issues. The potential withdrawal of Illinois Power, ComEd, and/or Ameren has the ability to create more "seams issues" and requires coordination that would otherwise not be necessary.

V. OPEN ARCHITECTURE

A. Order No. 2000 Requirement

In Order No. 2000, the Commission adopted its commitment to a policy of "open architecture" and proposed to require that RTOs be designed so that they can evolve over time. Order No. 2000 at 31,168. The Commission noted that there should be no provision in any RTO proposal that precludes the RTO and its members from allowing the RTO to evolve over time to meet market needs. *Id.* The Commission recognized the need of these

organizations to be flexible and open to fundamental changes in structure such as revised corporate strategies, geographic scope involving the rapidly changing trading patterns of markets, market support such as a power exchange and operations to meet market needs. *Id.* at 31,170. The Commission permitted the RTO to evolve in several ways as long as the proposed changes continue to satisfy Order No. 2000 minimum characteristics and functions. *Id.*

B. Midwest ISO Conformance with the Open Architecture Requirement

The Midwest ISO was incorporated as a Delaware non-stock, non-profit corporation in March 1998, and is governed by an independent Board. Under its original construction, the Midwest ISO would not own any transmission assets but would have functional control over the transmission facilities of those Transmission Owners agreeing to turn control of their assets over to the Midwest ISO. The Transmission Owners at the time decided this structure to be appropriate after exploring numerous alternatives. Some of the founding Transmission Owners of the Midwest ISO, including ComEd and Illinois Power, which have announced their intentions to depart the Midwest ISO, along with Ameren, collectively decided at the time that the not-for-profit structure was preferable because it was the model which had been embraced by the other operational ISOs and had been approved by FERC consistent with Order No. 888. Further, a not-for-profit structure was viewed as a way to minimize interference with the developing energy markets by creation of the independent system operator as an entity not owning any transmission assets thus avoiding the incentive to over-expand the transmission system or to favor transmission system expansion over generation construction.

1. Appendix I and Independent Transmission Companies

Because of changes in possible forms of transmission business models, the Midwest ISO allowed for change within the construct of the Midwest ISO itself. The Midwest ISO filed a new "Appendix I" to the Midwest ISO Agreement to allow independent transmission companies ("ITCs") to emerge within the structure of the Midwest ISO. When the Commission approved Appendix I, the Midwest ISO took a major step forward in establishing a framework where the open architecture envisioned by the FERC could flourish without compromising the numerous benefits an ISO brings to the table.[38]

Several of the Transmission Owners and potential transmission owners expressed a desire for the Midwest ISO to allow for some flexibility in the future as corporate strategies unfolded in the new competitive era where the previous paradigm of the vertically-integrated utility model may cease to be the dominant form of business organization. Today, public utilities are attempting to find their market niche – generation is being sold and for-profit ITCs are being contemplated by numerous entities in the region. With this as the background, the Transmission Owners of the Midwest ISO developed Appendix I.

Appendix I of the Midwest ISO Agreement defines a framework where properly structured ITCs, as approved by the Commission, can exist beneath the umbrella of the Midwest ISO. A consortium of transmission owners led by Commonwealth Edison were strong advocates of Appendix I, and these parties filed a request for a declaratory order with

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[38] *See, Commonwealth Edison Company, et al*., 90 FERC ¶ 61,192 (2000) in which the Commission accepted the Midwest ISO's Appendix I in Docket No. ER00-448-000 which created the framework for membership and operation of ITCs within the Midwest ISO.

the FERC consistent with Appendix I in December 1999.[39] The parties to an ITC filing have the burden to prove independence and obtain FERC approval. They also must forward details of their filing to the Midwest ISO thirty days prior to filing it with FERC.

The ITCs, once having been deemed by the FERC to be truly independent of any interest in generation, would be permitted to have more autonomy over traditional business functions previously carried out by the Midwest ISO. Under Appendix I, two key functions, security coordination and tariff administration, remain with the Midwest ISO. If the ITCs are of sufficient scope, it can develop its own mechanism for managing congestion within the ITCs. The ability to make their own rate filings becomes an ITC matter; however, the existence of an ITC within the Midwest ISO does not change the basic non-pancaking pricing structure achieved by the Midwest ISO. Revenue distribution becomes an ITC issue to be decided by those participating in the ITC. Other business-related functions previously performed by the ISO are then to be executed by the ITC. Some examples of these functions include, but are not limited to, full control over rates and electing to do its own billing for intra-ITC transactions. Equipment ratings, transmission planning, and transmission maintenance schedules become ITC matters but must still be coordinated within the framework of the Midwest ISO transmission planning and maintenance scheduling procedures. In addition, the ITC is permitted to do its own losses methodology.

As is evident, under Appendix I, properly structured for-profit ITCs can coexist under the Midwest ISO structure. The Midwest ISO understands that several MAPP transmission owners plan on forming an ITC pursuant to Appendix I. Appendix I, as approved by the

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[39] *See*, the December 13, 1999 submittal of Commonwealth Edison Company, et al. in Docket No. EL00-25-000.

FERC, represents a flexible framework under which transmission owners desiring a for-profit business structure can pursue these goals. The Midwest ISO also maintains that Appendix I demonstrates its recognition of the need to provide flexibility for its transmission owners and the Midwest ISO will support the development of ITCs within the Midwest ISO structure.

The Midwest ISO's acceptance of the ATC LLC is another example of the Midwest ISO's openness to change. Pursuant to the dictates of Wisconsin legislation, the Wisconsin transmission-owning entities will transfer their transmission assets to the ATC LLC. It will succeed the former individual owners in transmission ownership status at the Midwest ISO. These utilities involved are Wisconsin Electric, Wisconsin Public Service, Madison Gas & Electric, Alliant-Wisconsin Power & Light, Northwestern Wisconsin Electric, WPS Resources Inc. and Wisconsin Public Power Inc. ("WPPI"). Most of these companies are transferring their transmission assets, with WPPI contributing cash, to form the ATC LLC. The ATC LLC includes 6,000 miles of transmission lines with a book value in excess of $545 million. ATC LLC is a Member of the Midwest ISO and will take advantage of the operational benefits, enhanced reliability, and the promotion of competitive wholesale energy markets provided by the Midwest ISO once it becomes operational. The ATC LLC could eventually evolve into a stand-alone ITC. The Midwest ISO is supportive of ATC LLC and has been working with ATC LLC to help this new entity take form. The development of the ATC LLC in concert with the structure being developed by the Midwest ISO demonstrates the flexibility and evolution of the open architecture described by FERC in Order No. 2000.

Lastly, the Midwest ISO Transmission Owners have agreed to make changes to the Midwest ISO Agreement to accommodate the wishes of MAPP transmission owners before

those owners would be willing to join the Midwest ISO. Further changes to the Midwest ISO Advisory Committee structure have been agreed to, which involve expanding the voting representation to include MAPP regional representatives in the body. These changes were filed with the FERC and will be effective upon closing of the MAPPCOR asset acquisition by the Midwest ISO.[40]

2. A New and Improved Transmission Structure - The Midwest Transmission Coordination Authority

The Midwest ISO and their participating Transmission Owners have attempted on several occasions over the past year to merge with the Alliance RTO. Many stakeholder groups, including power marketers, state regulatory commissions, and consumers advocates have voiced a preference for these two entities to merge. Unfortunately, despite substantial efforts, no merger agreement has been reached to date. Under the circumstances, a true merger of the two RTOs does not seem likely; however, there are other potential models or frameworks which merit consideration for forming an affiliation of the two RTOs under use of a common reliability and security organization.

The Midwest ISO has made very clear the ramifications for the Midwest ISO's continued financial viability and regional configuration should its Transmission Owners be permitted to exit. The Midwest ISO is acutely aware of the rapid changes in the electric utility industry as it moves into an era of robust wholesale competition and development of energy markets. The Midwest ISO is not a rigid organization, stuck with old paradigms,

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[40] *See*, November 20, 2000 filing in Docket No. ER01-479-000 in which the Midwest ISO filed revisions to its Tariff and the Midwest ISO Agreement to expand the Midwest ISO Advisory Committee to include certain members of MAPP and provide certain MAPP Transmission Owners with the option of electing Network Transmission Service on behalf of their bundled load.

unable to change. If the preference of Transmission Owners has changed, then it is willing to work with them and all interested market participants, stakeholders and regulators in keeping with its pledge to be an open and inclusive member organization to work towards creating a single RTO for the Midwest region. To this end, if the participating Transmission Owners find a for-profit structure more desirable, the Midwest ISO will change and transform itself into a new legal form.[41]

Throughout this filing, the Midwest ISO has made clear the negative effects the departure of several Transmission Owners will have on the organization's continued viability as an RTO. The Transmission Owners of the Midwest ISO have echoed this sentiment in recent filings to the Commission and have gone so far as to ask for intervention by the FERC to resolve this calamity. The Midwest ISO believes it is in the best interest of all stakeholders that a single, large, seamless regional transmission organization be developed for the Midwest. The solution put forth in this Compliance Filing is based primarily on a proposal made by the Alliance RTO during merger discussions that would capitalize on the significant progress and investments made to date in human resources, technical expertise, hardware, software systems, and a nearly completed control center being built by the Midwest ISO.

The existing Carmel, Indiana infrastructure currently under development by the Midwest ISO could support a common Midwest Transmission Coordination Authority ("MTCA") for both the proposed Alliance RTO and Midwest ISO transmission systems, including the MAPP region. The MTCA also could provide comparable services to the

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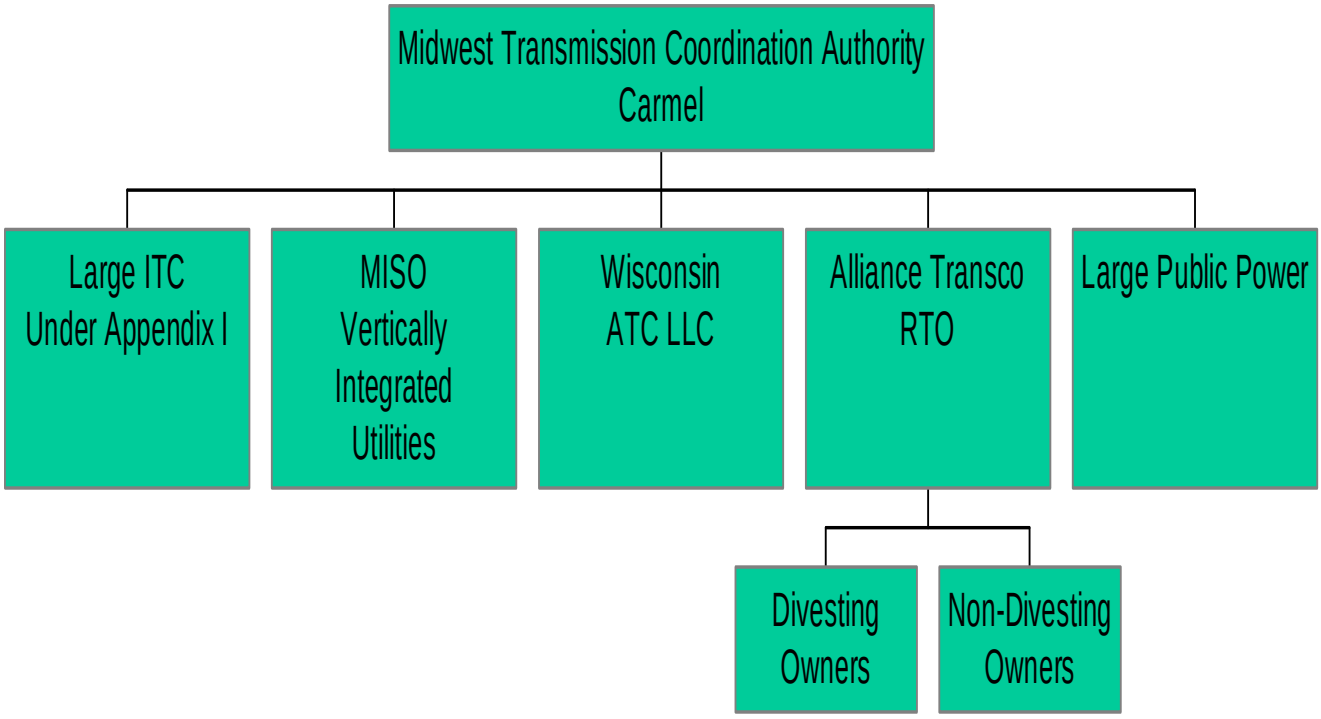
[41] *See, e.g.*, the Midwest ISO's December 15, 2000 Press Release, "Torgerson: Midwest ISO's Focus is On Meeting Member, Industry Needs" available at www.midwestiso.org under the heading "News Room."

Southwest Power Pool and GridSouth if the economics justified inclusion of these two proposed RTOs. The MTCA could be part of a for-profit company; however, the MTCA would only expect recovery of its costs, so as to not profit from ensuring reliability and providing security coordination. System reliability and security coordination functions are arguably not traditional business functions a for-profit transco or ITC should provide with the expectation of receiving a return on equity as found in the typical for-profit business model.

The MTCA could perform the following suggested list of functions on behalf of all Transcos, ITCs, ISOs and participating public power entities in the region:

- Security Coordination
- Security Coordinator
- Security Actions
- Electronic Scheduling
- Congestion Management Coordination
- Non-Rate Tariff Terms and Conditions
- Monitoring Adherence to Regional Reliability Organization Standards
- Independent Market Monitoring
- Consistent Available Transfer Capability Calculations
- Coordination of Available Transfer Capability between adjacent RTOs
- Provider of Last Resort for Ancillary Services
- Alternative Dispute Resolution
- Manage Curtailments
- Perform Losses Matrix Calculations
- Super-Regional Planning
- Coordination of Transmission and Generation Maintenance

This entity could serve as the foundation for alternative transmission-related business structures, including ITCs, Transcos, and ISOs, and would also serve as a vehicle for allowing publicly-owned transmission systems to participate in a FERC-approved RTO by contract or coordination agreement.



Some of the advantages of this model include:

- The Midwest ISO could complete the Midwest ISO building and the MTCA could use the current infrastructure without the risk of stranding any investment.
- Avoids duplicative infrastructure costs that would be incurred by each RTO individually.
- The Alliance RTO could continue to pursue its organizational structure and regulatory strategy without joining the Midwest ISO.
- Produces economies of scale by spreading common infrastructure costs, thereby lowering RTO operating costs on a per MWh basis for all customers over a larger region ranging from the Dakotas to Virginia.
- Achieves seamless integration of Midwest-wide reliability functions.
- The original Midwest ISO structure will still exist for those transmission owners not wishing to divest transmission assets to form an ITC.
- It allows properly structured ITCs to form under Appendix I.
- Public power entities can still participate in RTOs by contract or coordination agreement.
- Builds on inter-regional seams progress to date.

The proposed MTCA framework further demonstrates the Midwest ISO's receptiveness to an "open architecture" under FERC Order No. 2000 and the willingness of the Midwest ISO to change its course of direction to allow other forms of transmission structures to evolve. The Midwest ISO realizes its original structure was founded on the premise of the traditional vertically-integrated utility model where, at the time, there were few corporate strategies to divest of transmission assets and pursue transmission as a stand-alone, for-profit business.

The Midwest ISO believes that the other companies participating in the proposed Alliance RTO could also realize economies of scale by subscribing to the MTCA reliability, security coordination and seams coordination services. The MTCA would avoid the building of duplicative infrastructures and the redundancies inherent in having two adjacent entities spend tens of millions of dollars on the same systems with the same vendors. Duplicating efforts is not in the public interest and state regulatory commissions likely share in this concern.

As Mr. Thomas J. Mallinger discussed in his Affidavit attached to the Midwest ISO's Intervention and Protest to Withdrawal Notice of Exelon Corporation, et al. as Attachment A in Docket No. ER01-780-000, the existing Midwest ISO infrastructure currently under development in Carmel, Indiana could be the common MTCA for both the proposed Alliance RTO and Midwest ISO transmission systems. The infrastructure acquisition and construction efforts of the Midwest ISO's Coordination Center in Carmel (including related communications infrastructure, the electronic scheduling system ("ESS"), the regional

energy management system ("EMS"), the OASIS Automation tool, and the backup coordination center in Indianapolis) are well underway.

As Mr. Mallinger explained in his Affidavit, the Midwest ISO is building a fully detailed EMS model (no equivalents) for most of Alliance, all of MAIN, MAPP, and SPP and parts of SERC, which level of detail will represent all transmission facilities in these control areas. All of this information can be used by the MTCA to maximize use of the transmission system while maintaining system reliability. The Alliance flowgates in ECAR will be represented in full detail when processing requests for transmission service using currently anticipated OASIS Automation at the Carmel site. If the Midwest ISO finds it must expand the level of detail to operate as a single large RTO, it still has approximately 20,000 additional buses (a significant number to handle those of the Alliance Companies), which can be used to represent more detail in border control areas without a significant upgrade to the EMS.

As Mr. Mallinger further explained in his Affidavit, if the Midwest ISO and Alliance control areas were combined into a single large RTO, the scheduling processes could also be supported by the ESS system currently under construction (with additional schedulers for Alliance control areas being located in either Carmel, Columbus, Ohio or other locations chosen by Alliance members).

The MTCA would have regional security coordinators located either in Carmel or at remote sites, but the overall security coordination process would be under contract to the RTOs, and the MTCA regional security coordinators would use a single EMS with its large network model. This approach would ensure the use of common information by all security

coordinators and would avoid the additional infrastructure cost of each RTO developing toolsets needed by its security coordinators.

The MTCA could utilize the Midwest ISO infrastructure to provide services to multiple RTOs by the use of the Midwest ISO's ESS. Making use of a single scheduling system will reduce the burden of scheduling between RTOs and between control areas that exist under the RTOs.

Finally, the MTCA could further utilize the Midwest ISO infrastructure to provide services to multiple RTOs by the use of OASIS Automation and providing of information used for tariff administration. OASIS Automation could be used to access either a single OASIS site or multiple sites, depending on the preference of the RTO. Having several RTOs all using the same OASIS Automation tool ensures all reservations and schedules are being reviewed on a consistent basis before approval.

The Midwest ISO infrastructure is at various stages of completion with essentially all systems and facilities anticipated to be ready for market trials to begin on June 1, 2001. Market trials will be used to demonstrate to all Midwest ISO stakeholders that processes needed by the Midwest ISO to administer a regional tariff are in-place and functioning properly.

The Coordination Center in Carmel, Indiana is over 85% complete with the installation of computer equipment to take place after March 1, 2001 and the transfer of personnel to begin after April 1, 2001. The Backup Coordination Center in Indianapolis is over 90% complete and is only awaiting the transfer of personnel before being reconfigured

as an around-the-clock operations center (the computer room, communication equipment, emergency generator, and uninterruptible power supply have all been installed).

The Integrated Control Center Systems (computer hardware and all of the associated software) are nearing several critical milestones for having all needed functionality ready by June 1. The needed functionality includes all processes and systems needed to oversee the reliable operations of the Midwest ISO, administration of the Midwest ISO Tariff and the ability to perform settlement and billing for transmission service provided when the Midwest ISO goes operational on November 1, 2001. Formal factory acceptance testing ("FAT") of these computer systems starts in February 2001.

Following completion of the FAT, the various computer systems will be shipped to Carmel in March 2001. Once installation at the Carmel facility is complete, formal site acceptance testing (SAT) will begin in May and be complete in time for start of the market trials, June 2001.

The Wide Area Network ("WAN") that provides direct, secure communications (data and voice) between the control areas within the Midwest ISO and the Coordination Center in Carmel is physically complete and functional (with two exceptions). The work to automate the transfer of data between the various Midwest ISO control areas and the Carmel facility has commenced (greater than 50% complete) with a target for completion of August 2001.

The remaining portion of the infrastructure involves staffing. Currently, the Midwest ISO has a management structure in-place and has filled key positions needed to manage start-up projects, design/develop computer systems and the various power system models that these systems would utilize. Also, the necessary people are in place and are currently

working with the various Midwest ISO stakeholders on defining the various operational and business processes needed and how they will work once implemented.

As the Midwest ISO gets closer to its operational date, the around-the-clock (shift) positions that are needed to initiate operations will be filled. As these shift people are hired, the necessary training on how the various systems work will commence. If the MTCA structure is implemented the organization of these positions can be easily modified.

The MTCA structure would allow the Alliance Companies to focus on pursuit of transmission as a stand-alone for-profit business capitalizing on the sizeable investment in software, hardware, building and resources nearing completion in Carmel, Indiana.

3. A Single Seamless RTO for the Midwest

A large single RTO for the Midwest region is a laudable goal; however a true merger of the Midwest ISO and the proposed Alliance RTO is unlikely. Absent a merger, the Midwest ISO believes that the MTCA will provide a sound infrastructure for dealing with reliability, system security and the coordination of numerous seams issues, coupled with business functions performed by the Transcos, ITCs, ISOs and participating public power entities in the region, can accomplish the goals envisioned by FERC under Order No. 2000 under a multi-layered approach. Each of the transmission-related entities alone, whether it be the MTCA presented here, an ITC developed pursuant to Appendix I, or the American Transmission Company, standing individually on their own merits would not fully satisfy the standards defined by FERC under Order No. 2000 which would make them a compliant RTO unto themselves.

Collectively, with a proper segregation of functional responsibilities and resolution of several technical issues, each entity, including the proposed Alliance RTO and transmission systems operated by large public power agencies, can contribute to solving the RTO puzzle for the region. If the puzzle pieces are arranged properly, the goal of achieving a single regional transmission organization built on the foundation described under the MTCA proposal can result in a large virtual RTO serving all stakeholders in the Midwest region.

C. Open Architecture Conclusion

The Midwest ISO has embraced the concept of "open architecture" and has demonstrated its ability to be flexible and keep pace with a rapidly changing business environment as the electric utility industry moves through this era of restructuring. The Midwest ISO already supports the evolution of properly structured independent transmission companies under Appendix I. The inclusion of the ATC LLC within the Midwest ISO's current structure further demonstrates the Midwest ISO's adaptability. Finally, the proposed framework of a MTCA further demonstrates that the Midwest ISO is a flexible organization that is willing to evolve in response to changed circumstances. The MTCA would be well suited to support regional reliability, security coordination, and coordination of the seams between adjacent regional transmission organizations.

If the Alliance Companies can embrace the MTCA concept, then it will serve not only their economic interests, but the interests of all market participants and the public interest as well. A large, single RTO, compliant with Order No. 2000, serving a region from the Dakotas to the Atlantic Ocean is within reach.

VI. RATE ISSUES – THE ELIMINATION OF RATE PANCAKING

A. Order No. 2000 Requirement

In Order No. 2000, FERC reaffirmed that it is critically important for RTOs to develop ratemaking practices that eliminate regional rate pancaking. Order No. 2000 at 31,171. The Commission stressed, however, that it would continue to be receptive to distance-sensitive and other rate proposals "that can be supported." The Commission also encouraged (i) reciprocal waivers of access charges between RTOs "as long as they are reasonable in terms of cost recovery, cost shifting, efficiency, and discrimination" and (ii) terms and procedures that are compatible from region to region. *Id*. at 31,176.

B. Midwest ISO Conformance by Eliminating Pancaked Rates

The Midwest ISO rate structure does eliminate pancaked transmission charges as required under Order No. 2000. The Transmission Owners were able to reach a compromise after over a year and a half of negotiations regarding pricing. Under this pricing methodology, zonal rates[42] apply in the first six years. These zonal rates would apply to network service and "drive within" and "drive-in" point-to-point service.[43] The rates charged would be based on the zone where the load is located. For through point-to-point transmission and transmission out of the ISO during the six-year transition (as well as after),

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[42] The zones will follow control areas. In instances where multiple Transmission Owners are within one zone, the Transmission Owners will need to develop an allocation of the revenues going to the zone. Transactions between Transmission Owners within a zone will be subject to the same ISO charges as any other transactions between Transmission Owners.

[43] "Drive-in" service involves power moving from a control area outside the ISO to a load within the ISO. "Drive within" service involves power from a source to a load, both of which are within the ISO.

average ISO rates would apply. By paying the single zonal or average charge, the customer would be able to use the entire Midwest ISO system at one rate. Thus, there would be no pancaking of charges.

At the end of the six-year transition period, it is contemplated that there will be one single system postage stamp rate for the Midwest ISO if certain circumstances are present. Customers taking any type of transmission service, whether network or point-to-point, will pay one single average rate to go anywhere within the Midwest ISO system.

This approach of zonal rates during a transition period leading to a single-system rate is consistent with the Commission's directive in PJM's filing in *Atlantic City Electric Co.*, 77 FERC ¶ 61,148, at 61,577 (1996). There, the Commission stated:

> We note that the Supporting Companies' proposal tends to limit the amount of cost shifting among customers in different service territories, by establishing separate zones reflecting the boundaries of existing transmission owners. We recognize that, without some protection against cost shifting, utilities may be reluctant to enter into ISO agreements. Therefore, some initial assurances against cost shifting may be necessary to ensure broad participation in an ISO. The zonal feature of the Supporting Companies' proposal appears to be one acceptable way to mitigate cost shifts. However, ultimately the Supporting Companies should provide for a transition over a reasonable time to more appropriate pricing, *e.g.*, rates based on electrical characteristics and power flows instead of corporate boundaries.

Under the Midwest ISO's pricing proposal, certain special rules were adopted in order to ensure comparability and to make the proposal more palatable to a broader range of entities. For example, the pricing methodology seeks to charge all transmission customers the same price for seeking to serve the same load. This concept of putting all competitors on an even playing field is one of the underlying principles of comparability. Further, as part of the transition period, customers or loads are considered to be under the Midwest ISO Tariff

once those customers or loads have the option of choosing different suppliers. Thus, whether the customer chooses a new supplier or not, the same transmission rate will apply. If retail customers have choice but choose to continue to purchase power from their host transmission company, that transmission company (as a Midwest ISO Transmission Owner) must take service from the Midwest ISO for those customers. After the transition period, all load (including load under grandfathered agreements) is under the Midwest ISO Tariff. If Transmission Owners serve bundled customers at this time, whether the customers have choice or not, the Transmission Owners will be required to take service for that load from the Midwest ISO. A full description of the pricing compromise is contained in Appendix C to the Midwest ISO Agreement.

C. Opportunities for Performance-Based and Innovative Ratemaking

The Midwest ISO has a fiduciary responsibility to maximize revenues to its Transmission Owners in a manner consistent with Commission policy. The current Midwest ISO pricing proposal was filed and accepted by the Commission prior to the promulgation of FERC Order No. 2000 and was negotiated in light of the guiding principles on ISO formation under FERC Order No. 888. Since then, there has been much discussion on, and increasing support for, the use of incentives to encourage efficient and reliable transmission service, and Order No. 2000 allows and encourages innovative pricing proposals. As a result, the Midwest ISO is actively considering filing revisions to its pricing methodology.

The application of performance-based rates ("PBR") to the transmission function of the electric utility is an extremely new and interesting concept. Transmission owners in all forms of transmission organizations, including the Midwest ISO, are only now beginning serious design efforts to accomplish this goal. Indeed, the Midwest ISO's responsibility to maximize its Transmission Owners' revenues, subject to the Commission's policies, gives it the obligation to search for performance-based mechanisms that can be implemented by the ISO and/or its transmission owners to enable both the ISO and its transmission owners to perform their functions as efficiently as possible.

It is commonly but erroneously believed that not-for-profit organizations such as the Midwest ISO cannot be incentivized to perform more efficiently. Consistent with this view, some advocates of for-profit transcos erroneously assert that the for-profit structure is necessary for an RTO to implement performance-based financial incentives. However, Order No. 2000 clearly indicates that for-profit transcos are not the only type of RTO with the capability of designing and implementing a program of performance-based rates. The Commission concluded in Order No. 2000 that "although the application of PBR may vary according to the type of RTO, there is no reason to limit the applicability of PBR to certain members or types of RTOs." Order No. 2000 at 31,184. The Order further stated, "in the context of an ISO or a tiered ISO/transco . . . the activities that contribute to performance may be shared between the RTO and the transmission owners." *Id*.

Thus, while the Midwest ISO does not have equity holders, its staff and officers can be given financial incentives to perform better. The notion of incentives for efficient Midwest ISO management and staff was clearly stated in the Midwest ISO Agreement. *See*,

Midwest ISO Agreement at 66. Furthermore, the Transmission Owners are analogous to shareholders in the Midwest ISO, and they could share the benefits of performance improvements created by the ISO. This would align the incentives of the ISO and the Transmission Owners to work together to produce more effective and independent results.

There is no reason why incentives cannot be established to measure and reward the ability of the Midwest ISO to deliver critical services, such as congestion management and real-time balancing, as cheaply and effectively as possible. As with all incentive designs, including those applying to "transcos," the key to a proper performance-based ratemaking mechanism is the establishment of understandable and objective performance metrics. In addition, such metrics should reflect factors under the RTO's control, and the risks associated with the mechanism (*i.e.*, the probability that revenues will fall below the aggregate revenue requirement of RTO members) should be commensurate with the potential rewards.

In Order No. 2000, the Commission expressed openness to a number of innovative ratemaking proposals and suggested that they would consider performance-based ratemaking proposals on a case-by-case basis. In the area of innovative pricing proposals, special mention should be made of revenue neutrality provisions.[44] The Midwest ISO believes many of the Midwest ISO's current Transmission Owners have analyzed the financial impact of a provision such as the Zonal Transition Adjustment ("ZTA") included in the Alliance

[44] We include this topic here even though this ratemaking adjustment is not a performance-based rate provision in the usual sense, *i.e.* it does not incentivize transmission owners to behave more efficiently. It is a performance-based provision only in the sense that it incentivizes owners to join an RTO in the first place, or to join one RTO over another.

Companies' recent compliance filing.[45] The ZTA is a transition mechanism which allows each transmission owner to collect historical test year revenues that otherwise would be lost due to the elimination of rate pancaking. The potential financial benefits inherent in the ZTA are causing Midwest ISO participants to consider participating in the proposed Alliance RTO.

The Midwest ISO believes that, as an existing FERC-approved ISO seeking the Commission's approval as a compliant RTO within this filing, once this approval is granted, the door is open to current Midwest ISO Transmission Owners to seek the benefits of innovative ratemaking mechanisms, including transitional proposals which would allow Midwest ISO participants to recover the same threshold of revenues currently collected under their existing individual open-access transmission tariffs. The Midwest ISO is currently analyzing several options which are similar to the ZTA proposed by the Alliance Companies and, once the Midwest ISO has received approval as a compliant RTO, it will work with all of its Transmission Owners, to calculate the revenues each would lose as a result of the elimination of rate pancaking and to file a transitional rate proposal that would hold them financially harmless.

The Commission provided further direction in Order No. 2000 with respect to enhanced returns on equity where the Midwest ISO seeks an aggregate return on equity of 11.5%, levelized rates and accelerated depreciation and incremental pricing for new transmission investments. However, on a case-by-case basis, the Commission stated it would consider an evaluation of a proposal which the Midwest ISO believes includes consideration

[45] *See*, Attachment F of Alliance Companies' September 15, 2000 compliance filing in Docket Nos. ER99-3144-000 and EC99-80-000 (not consolidated).

of a revenues lost approach upon receiving approval as a compliant RTO. In the Commission's recent Order in *American Transmission Company LLC*, in which ATC LLC requested innovative rates in the context of their proposed "Capital Expansion Adder," the Commission stated it would consider such rate treatment after ATC LLC joined an approved RTO. *American Transmission Company, LLC*, 93 FERC ¶ 61,267 (2000). This was consistent with the Commission's prior ruling on innovative rates in *International Transmission Company*, where the Commission authorized an effective date for innovative rate treatment contingent upon International Transmission Company's participation in a Commission-approved RTO by December 15, 2001. *International Transmission Company*, 92 FERC ¶ 61,276 (2000).

The Midwest ISO reads the Commission's Orders in *American Transmission Company LLC* and *International Transmission Company* as an indication of early policy development with regard to innovative ratemaking and believes RTO compliance is a prerequisite to an RTO's request for innovative rate filings. The Midwest ISO intends to collaborate with its Transmission Owners with intentions of filing an innovative ratemaking approach to address revenue neutrality upon receiving FERC approval that the Midwest ISO is a compliant RTO pursuant to Order No. 2000.

VII. PUBLIC POWER, COOPERATIVES, FEDERAL POWER MARKETING AGENCIES AND CANADIAN ENTITY PARTICIPATION IN RTOS

A. Order No. 2000 Issues

The Commission stated its objective of encouraging all transmission owning entities, including transmission owned or controlled by public power entities and cooperatives,

Federal Power Marketing Agencies ("PMAs"), Tennessee Valley Authority ("TVA"), and other state and local entities, to place their transmission facilities under the control of an RTO. Order No. 2000 at 31,196. The Commission further expressed that public power entities would fully participate in the collaborative process for forming RTOs. The Commission noted that it was aware and concerned that public power entities face several difficult issues regarding RTO formation and participation. The major issue is the Internal Revenue Service ("IRS") Code "private use" restrictions on the transmission facilities of public power entities financed by tax-exempt bonds and the IRS temporary regulations. Cooperatives are concerned that if more than fifteen percent (15%) of their revenues come from non-member sources, then all of their revenues may be taxable. With regard to Canadian involvement in RTO formation, the Commission stated that regional institutions should include all market participants in order to provide direct access to information, to benefit from non-pancaked rates, to prevent the wasteful duplication of grid facilities, and to implement reliability standards implemented by RTOs acceptable to the affected nation**.**

B. Midwest ISO's Progress on Public Power, Federal Power Marketing Agencies, Cooperatives and Canadian Entity Participation in RTOs

The Midwest ISO has worked aggressively to foster the interest of public power, cooperatives and Canadian entities in the formation of RTOs. Three of the transmission owners currently participating in the Midwest ISO are cooperatives. Wabash Valley Power Association and Hoosier Energy R.E.C., Inc. are both charter members of the Midwest ISO. Southern Illinois Power Cooperative is also a member of the Midwest ISO. The Midwest ISO has also been actively pursuing further cooperative participation with several companies in the MAPP region. All of the public power entities in Nebraska have examined joining the

Midwest ISO, and the Midwest ISO has worked with these companies to address each of their issues. However, the impending departures of Ameren and ComEd have caused the Nebraska public agencies to hold off on making any formal membership commitments. The Nebraska Public Power District has been involved with a group of Midwest utilities, which are considering forming an independent transmission company under Midwest ISO's Appendix I. Dairyland Power Cooperative and Minnkota Power Cooperative in MAPP expressed their intent and outlined issues inherent in joining the Midwest ISO in their October 16, 2000 filing. The East Kentucky Power Cooperative also mentioned an interest in joining the Midwest ISO when it was in their economic best interest to do so. The Midwest ISO is attempting to work through all of these issues with these cooperatives and have always been receptive to the concept of inclusion of these entities in the membership of the Midwest ISO.

The Western Area Power Administration has also explored joining the Midwest ISO; however, its largest issue rests with cost shifting that would take place given the current pricing structure. This will be addressed with them directly. In conjunction with the affiliation of MAPP members and the asset purchase agreement of MAPPCOR's assets, the Midwest ISO has also had discussions with Manitoba Hydro. At this time, language for a draft form of coordination agreement is being negotiated between Manitoba Hydro and the Midwest ISO, which would include these Canadian transmission facilities in the Midwest ISO if an agreement can be reached. And finally, the Midwest ISO recently had initial discussions with representatives from the TVA regarding inclusion of TVA in the Midwest ISO as a transmission owner on a contractual basis. All of these ongoing discussions point to

the fact that the Midwest ISO is all inclusive in its willingness to work through the issues of public power entities, PMAs, cooperatives, and Canadian concerns in the formation of RTOs.

VIII. CONCLUSION

Under its present scope and configuration, the Midwest ISO meets the requirements of FERC's Order No. 2000 requiring transmission owners to be in a functioning RTO by the end of 2001. The FERC's required four characteristics and eight functions, along with its open architecture and non-pancaking of rates requirements, as explained in Order No. 2000, presented over thirty (30) individual elements against which the Midwest ISO will be evaluated. The Midwest ISO presently meets Order No. 2000's requirements in every instance and meets the intent of Order No. 2000 in nearly all aspects. With respect to areas such as congestion management and the provision of a real-time energy imbalance market, the Midwest ISO has kept the spirit and intent of FERC's requirement as the basis for the Midwest ISO's current actions so that it can meet Day 1 requirements and ensure that the follow-up implementation of systems will meet the evolving standards FERC sets and the needs of the market and the Midwest ISO's stakeholders.

The acceptance of the proposed MTCA regional transmission structure by market participants will go a long way in solving uncertainties and conflicts currently looming in the Midwest. Decisions and actions must occur in an expedient manner in order to allow the multiple RTO options to converge and allow for the further development of competitive Midwest wholesale energy markets.

IX. RELIEF REQUESTED

For the reasons stated above, the Midwest Independent Transmission System Operator, Inc. respectfully request that the Commission find and conclude that the Midwest ISO is an RTO in compliance with Order No. 2000.

Respectfully submitted,

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